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IN THE

Supreme Court of the United States

October Term, 1984

MICHAEL A. WILLIAMS,

Petitioner,

vs.

THE STATE OF DELAWARE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF DELAWARE

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Questions Presented for Review

1. Whether "transactional" immunity from prosecution, granted to Petitioner to compel self-incriminating testimony, violates the requirements of the Fifth Amendment if the immunity encompasses only a portion of a transaction but not the entirety of the transaction?

2.(a) Whether "use" immunity or "transactional" immunity from prosecution, granted to Petitioner to compel self-incriminating testimony, violates the requirements of the Fifth and Fourteenth Amendments if the immunity is conditioned upon the truthfulness of the statements given and if, in the event that some of Petitioner's statements are not true, *all* of his statements—both true and false—will be used against him in relation to the charges for which the immunity was originally granted?

(b) If not, then whether the requirements of the Fifth and Fourteenth Amendments are violated by revocation of such conditional "use" or "transactional" immunity, in the event that the condition of truthfulness is not met, if (i) none of the untruthful statements were given under oath, and all relevant statements given under oath were truthful, and (ii) none of the untruthful statements were relevant to the purposes for which they were obtained, namely, to convict two co-defendants?

(c) If not, then whether Petitioner's conviction must be reversed, as being in violation of the requirements of the Fifth and Fourteenth Amendments, because the conviction (i) was obtained in contravention of the State's agreement to confer transactional immunity, and (ii) resulted from information that was obtained as a

result of Petitioner's statements, in contravention of the State's agreement to give him use and derivative use immunity?

3. Whether the State can withdraw its offer of immunity, resulting in Petitioner's conviction, after the State has received the full benefit of its bargain by having compelled all of the information that was necessary from Petitioner to convict two co-defendants whose crimes were much more serious?

4. Whether Petitioner waived his Fifth and Fourteenth Amendment rights against self-incrimination, and if so, whether the waiver was voluntary, knowing, and intelligent?

5. Whether there was sufficient evidence for Petitioner's convictions for robbery or conspiracy?

6. Whether the use against Petitioner of his statements given during immunity discussions is a violation of Delaware Rule of Evidence 410?

7. Whether Petitioner's Sixth and Fourteenth Amendment right to a fair trial by an impartial jury was violated because of the presence in Petitioner's trial of two jurors who concealed from the court in *voir dire* that they were acquainted with a co-defendant and a witness, both of whom were key State witnesses who provided testimony that was significant in convicting Petitioner?

8. Whether Petitioner received effective assistance of counsel in accordance with the standards established under the Sixth and Fourteenth Amendments?

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Opinions Below

The opinion of the Supreme Court of the State of Delaware, *Delaware v. Williams*, _____ A.2d _____ (Del. 1985), affirming Petitioner's conviction by the Superior Court of the State of Delaware in and for Kent County, is not yet officially reported but is included herewith as Appendix E (pp. 5a-19a).

There was no opinion or order from the Superior Court of the State of Delaware in and for Kent County entering judgment on Petitioner's conviction in *Delaware v. Williams*, (Crim. Nos. IK 82-05-0079, IK 82-05-0080, 1983).

Grounds for Jurisdiction

The judgment of the Supreme Court of the State of Delaware, affirming the judgment of the Superior Court of the State of Delaware in and for Kent County, which convicted Petitioner, of first degree robbery and second degree conspiracy, was entered on March 8, 1985 (App. D, p. 4a); and the Order Denying Reargument and the Order Denying Rehearing *En Banc* were entered by the Supreme Court of the State of Delaware on April 10, 1985 (App. C, p. 3a; App. B, p. 2a, respectively).

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3).

Constitutional and Statutory Provisions Involved

Constitution: U.S. Constitution, Amendment V (App. I, p. 116a); Amendment VI (App. J, p. 117a); and Amendment XIV, Section 1 (App. K, p. 118a).

Statutes: Delaware Rule of Evidence 410 (App. L, p. 119a); 11 Delaware Code §512 (App M, p. 120a); 11 Delaware Code §832 (prior to July 2, 1982) (App. N, p. 121a).

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No._____

MICHAEL A. WILLIAMS,

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vs.

THE STATE OF DELAWARE,

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PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF DELAWARE

Statement of the Case

This appeal results from a conviction of Petitioner Michael A. Williams ("Petitioner") by the Superior Court of Delaware in and for Kent County ("Superior Court"), and an affirmation of the conviction by the Supreme Court of the State of Delaware ("Delaware Supreme Court"), for first degree robbery and second degree conspiracy to commit robbery.

The Incident

On February 8, 1982, Petitioner, who had never before been arrested or convicted (App. F, p. 37a), received a telephone call from an acquaintance, co-defendant Tyrone Baxter ("Baxter"), who asked Petitioner to pick him up at his mother's house and drive him to the bus station (App. F, pp. 24a, 38a; App. G, p. 68a). Petitioner originally refused because he had no gas, but he then agreed when Baxter offered to pay for the gas (App. F, p. 38a; App. G, pp. 68a-69a). When Petitioner went to Baxter's mother's house to pick him up, Baxter introduced him for the first time to co-defendant James Riley ("Riley") (App. F, pp. 38a-39a). While at the house, Baxter showed Petitioner a gun and then apparently stored it away (App. F, 39a; App. G, p. 70a). The three of them then went in Petitioner's car to the bus station.

On the way to the bus station, the two co-defendants began talking about needing money and said they might do a "hustle" to get some money (App. F, pp. 25a, 42a). Unbeknownst to Petitioner, Riley had brought the gun (App. F, pp. 32a, 40a). Baxter and Riley then asked Petitioner to take them to a liquor store to buy something (App. F, p. 25a). Fearing that co-defendants might be planning something illegal, Petitioner stressed to them that he wanted nothing to do with it (App. F, pp. 25a, 30a, 42a; App. G, pp. 73a, 76a).

Petitioner parked his car in front of a housing development near the Sandbar Liquor Store ("Store"), whereupon the two co-defendants went to the Store, and Petitioner went to visit a friend in the housing development (App. F, p. 43a). Petitioner's friend was not home and he returned to the car at about the time both co-defendants were also returning (App. F, p. 43a). In the car on the way to the bus station, co-defendants told

Petitioner that they had robbed the Store and shot the proprietor (App. F, pp. 27a, 43a). Baxter advised Riley that Petitioner came from a good family and had never been in trouble, and that they should try to keep Petitioner from getting involved (App. G, p. 73a). Baxter gave Petitioner twenty dollars for gas, and Petitioner left both co-defendants near the bus station (App. F, p. 44a; App. G, p. 76a).

The Immunity Agreement

After both co-defendants were arrested, authorities did not have sufficient evidence to convict them because there was no eyewitnesses to the shooting and the gun was never found. Authorities also had reason to believe that Petitioner was involved, but that he had not been in the Store or otherwise involved in the actual shooting (App. H, p. 82a). Accordingly, on May 8, 1982, a Delaware Deputy Attorney General and the police met with Petitioner and his counsel ("Immunity Meeting") and gave him a letter of the same date ("Immunity Letter") which offered him "use and transactional immunity for his testimony" (App. H, p. 85a).

Although the Delaware Supreme Court in *Delaware v. Williams*, _____ A.2d _____ (1985), described the immunity agreement as "unambiguous" (App. E, p. 12a), the conditions upon which the immunity would be offered were unclear because the Immunity Letter offered immunity "if [Petitioner] was not directly involved in the . . . homicide" (App. H, p. 85a), and it stated that use and transactional immunity was:

> . . . conditional upon your client not being either the shooter or the other individual who entered the [Store] when the murder occurred. We believe your client, at this time, was neither of the above. This offer is premised upon our belief that [Petitioner]

> was waiting in a vehicle while the two actual participants committed the murder. If, after listening to [Petitioner], this information proves to be false, either through his failing of [*sic*] polygraph or otherwise, this immunity is of no force and effect (App. H, p. 85a).

The oral description of the immunity offer at the Immunity Meeting by Petitioner's counsel and the Deputy Attorney General, however, was somewhat different than the Immunity Letter—the oral description made the immunity conditional upon Petitioner's not having prior or subsequent knowledge that co-defendants planned to rob the Store. As Petitioner's counsel stated:

> The State has indicated that if you . . . had no prior involvement [and] didn't know that a robbery was about to be committed, or murder was about to be committed, and after the incident . . . on that day or within a few days thereafter that you had no direct knowledge that the robbery or conspiracy or the murder was committed that day, the State will not prosecute you for the robbery and conspiracy. (App. H, p. 87a).

Moreover, the Immunity Letter stated that there would be no immunity for robbery or conspiracy, but it also suggested that immunity would be offered for robbery and conspiracy:

> If [Petitioner] passes and shows no deception on the polygraph with regard to the robbery or conspiracy we will not proceed with any charges against your client for his testimony. (App. H, pp. 85a-86a).

Petitioner was arrested at the Immunity Meeting for robbery and conspiracy (App. H, p. 93a), and after being arrested, he began, *without being sworn*, to provide substantial information to a Deputy Attorney General and the police in the presence of a court reporter. During the Immunity Meeting, the Deputy Attorney General

began to express considerable doubt as to whether Petitioner was telling the truth (App. H, pp. 104a, 110a-111a, 114a). After the Immunity Meeting, Petitioner continued to assist the police, commencing with accompanying police that day to the scene of the crime.

The Chronology of Litigation

On May 12, 1982, Petitioner took a polygraph test regarding the incident, and deception was indicated. On June 7, 1982, Petitioner was indicted for murder, felony murder, robbery, and conspiracy, among other charges. Although the murder charges are apparently inconsistent with the offer in the Immunity Letter of transactional immunity for murder, there is no indication that the Deputy Attorney General ever advised Petitioner that the immunity agreement was void.

On December 6, 1982, the trial for Riley commenced (App. G, pp. 65a-84a). The State agreed to drop the felony murder charge against Baxter in return for (a) his plea of guilty on the murder and robbery charges (for which Baxter was given a life sentence), and (b) his testimony at Riley's and Petitioner's trial. The State entered a *nolle prosequis* in relation to the murder charges against Petitioner in and compelled him to testify at Riley's trial. Largely on the strength of Petitioner's testimony, Riley was convicted of murder and felony murder, among other charges, and was given a death sentence. At Riley's trial, Petitioner admitted that he had lied in the Immunity Meeting when he was not sworn (App. G, pp. 77a-78a).

On April 25-26, 1983, Petitioner was tried (App. F, pp. 20a-64a). During Petitioner's testimony, he again admitted that he lied in the Immunity Meeting (App. F,

pp. 46a-47a, 51a-53a); and his statement in Riley's trial that he lied in the Immunity Meeting was used to impeach him (App. F, pp. 56a-59a). The jury returned a guilty verdict on first degree robbery and second degree conspiracy.

The Juror Problem

During Petitioner's trial, his mother learned that two jurors knew Baxter and another State witness. During *voir dire*, the jurors had concealed their knowledge of and relationship with Riley and the other State witness. Upon Petitioner's motion, the Superior Court judge examined the jurors after the verdict and ruled that two of the jurors knew one of the defense witnesses and Riley, and that these jurors had concealed that fact during *voir dire*, but that these jurors' knowledge was not prejudicial to Petitioner and may, in fact, have inured to his benefit. Petitioner was sentenced consecutively to ten years for robbery and five years for conspiracy.

The Instant Petition

The Delaware Supreme Court affirmed Petitioner's conviction, *Williams v. Delaware, supra,* and denied his motions for re-argument and for re-hearing *en banc,* and the instant Petition followed.

Treatment Below of the Issues in This Petition

The issues raised herein regarding immunity and waiver, effective assistance of counsel, and insufficiency of evidence, were not raised below, and these issues therefore were not discussed below by the Superior Court or by the Delaware Supreme Court.

The Rule 410 admissibility issue was raised below and discussed by the Delaware Supreme Court, which affirmed the Superior Court's decision that the evidence in question was admissible (App. D, pp. 9a-13a).

The juror taint issue was raised below and discussed by the Delaware Supreme Court, which affirmed the Superior Court's decision that the acquaintanceship of two jurors with co-defendant Baxter and another key State witness against Petitioner was not prejudicial to Petitioner (App. D, pp. 14a-17a).

REASONS FOR ALLOWANCE OF THE WRIT

Practical Impact

In addition to the legal arguments presented herein for allowance of the writ, Petitioner respectfully submits that this case has significant practical impact beyond his own case. Defendants will be *much* more reluctant to enter into immunity agreements if, through devices such as the conditional immunity and the partial transactional immunity used in the instant case, prosecutors were permitted to obtain all of the information they need from one co-defendant to convict other co-defendants, and then to convict the helpful co-defendant by unilaterally deciding that the immunity was void. The added drain on scarce judicial and prosecutorial resources of defendant unwillingness to offer information in return for immunity would be substantial, to the serious detriment of the courts, the prosecutors, the defendants, and the public.

Legal Arguments

Although Points I-IV were not raised below, Petitioner respectfully requests this Court to decide these issues now because they are purely legal issues that require no additional fact development, and there would be no

prejudice to the State if these issues were decided now.[1] This is particularly true where consideration of the issue is necessary to avoid "substantial injustice," *e.g.*, *Hormel v. Helvering*, 312 U.S. 552 (1941). In the instant case, the substantial injustice to be avoided derives from the fact that the issues were not raised below because Petitioner did not enjoy the benefit of competent counsel below, as discussed more fully in Point IX, *infra*.

The competence of counsel issues raised in Point IX, *infra*, are being raised here for the first time because Petitioner did not retain present counsel until after the proceedings had been completed in the Delaware Supreme Court.

POINT I

Partial transactional immunity conflicts, in principle, with the decisions of this Court.

In order for a grant of immunity for the compulsion of testimony to pass constitutional muster, the immunity must be at least as extensive as the scope of the Fifth Amendment privilege against self-incrimination.[2] The Fifth Amendment protection against self-incrimination applies to states by virtue of Section 1 of the Fourteenth Amendment, *e.g.*, *Andresen v. Maryland*, 427 U.S. 463 (1976); and the burden is on the *State* to demonstrate that the immunity passes constitutional muster, *e.g.*, *Kastigar, supra*, because once immunity is granted, the testimony is legally *compelled*, *e.g.*, *U.S. v. Warren*, 373 A.2d 874 (D.C. App. 1977).

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[1] *Turner v. Memphis*, 369 U.S. 350 (1962); *U.S. v. Gabriel*, 625 F.2d 830 (9th Cir.), *cert. denied*, 449 U.S. 1113 (1981); *U.S. v. Tramunti*, 500 F.2d 1334 (2nd Cir.), *cert. denied*, 419 U.S. 1079 (1974).

[2] *Kastigar v. U.S.*, 406 U.S. 441, *reh. den.*, 408 U.S. 931 (1972); *Stevens v. Marks*, 383 U.S. 234 (1966); *American Lithographic Co. v. Werckmeister*, 221 U.S. 603 (1911).

In the instant case, the State purported to give transactional immunity in relation to the murder, but not in relation to the robbery or conspiracy (App. H, p. 85a).[3] Because the homicide was committed in the course of the robbery for which there was a conspiracy, Petitioner's testimony with respect to the homicide necessarily implicated him, and therefore necessarily constituted a relinquishment of his Fifth Amendment rights against self-incrimination, in relation to the robbery and conspiracy for which he was ultimately convicted.

Because the murder, robbery, and conspiracy aspects of the transaction are so intimately related, the State has not, and cannot, demonstrate that the partial transactional immunity was constitutionally adequate. Accordingly, Petitioner respectfully submits that this Petition should be granted because the conviction, which resulted in part from information obtained from Petitioner pursuant to the partial transactional immunity, is unconstitutional and must be reversed.

POINT II

If Petitioner's use or transactional immunity is voided because Petitioner's information is false, the use of any of Petitioner's information against him, except for purposes of perjury or contempt, conflicts with decisions of this Court.

If any sworn information given pursuant to an agreement of use or transactional immunity turns out to be false, the appropriate remedy is to commence

[3] Petitioner notes, however, that the State agreed in the Immunity Letter that it would "not proceed with any charges" against Petitioner (App. H, p. 85a). This statement arguably applied to robbery and conspiracy, as well as murder; and it has been held that a promise not to press charges constitutes transactional immunity, in *Rowe v. Griffin*, 676 F.2d 524 (11th Cir. 1982).

proceedings for perjury or contempt. *None* of the information obtained pursuant to the immunity, however—the true information[4] or the untrue information[5]—may be used either to obtain a conviction in relation to the crime for which the immunity was granted;[6] or to impeach Petitioner in the trial of the crime for which the immunity was granted, *e.g.*, *U.S. v. Hockenberry*, 474 F.2d 247 (3rd Cir. 1973).

Defendants would have little incentive to provide any information pursuant to an immunity agreement that was conditioned upon truth if they had to be concerned that, upon the failure of the condition, any of the information would be used either (a) to convict them of the crime for which the immunity was originally granted, or (b) to impeach them in the trial upon the crime for which the immunity was originally granted. Because defendants know that the immunity is to facilitate the conviction of others, such defendants may give the full and complete story about the targeted others, while consciously or unconsciously being untruthful about themselves to avoid embarassment or shame.

In addition, the only constitutionally permissible method of ascertaining the truth of an immunized assertion would be a full trial for perjury or contempt.

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[4] The true information retains its constitutional protection, even after the condition fails. Thus, in actuality, the immunity is *never* conditional as to the true information in relation to the crimes for which it is being given, but only with respect to contempt or perjury.

[5] The untrue information would be useless to obtain a conviction except for perjury or contempt.

[6] *Rowe v. Griffin*, 676 F.2d 524 (11th Cir., 1982); *U.S. v. Tramunti*, 500 F.2d 1334 (2nd Cir.), *cert. denied*, 419 U.S. 1079 (1974); *U.S. v. Warren*, 373 A.2d 874 (D.C. App. 1977).

Clearly the State cannot unilaterally decide that a statement is untrue and void an immunity agreement, because the State is not a disinterested participant.

Because such conditional immunity depends upon the State's unilateral decision regarding what is true, it is not co-extensive with the scope of the privilege against self-incrimination;[7] and Petitioner's conviction, which resulted from information obtained from Petitioner pursuant to the conditional immunity, must therefore be reversed.

POINT III

Even if an untruth could void the immunity agreement, such immunity would be inconsistent, in principle, with decisions of this Court unless the untruth were both sworn and relevant.

All of the cases regarding the remedy for untruthful information obtained pursuant to an immunity agreement relate to *sworn* untruthful information *e.g.*, *U.S. v. Tramunti*, 500 F.2d 1334 (2nd Cir.), *cert. denied*, 419 U.S. 1079 (1974). There is no basis for taking action against *unsworn* testimony because there can be no perjury in relation to unsworn information, *e.g.*, *U.S. v. Hvass*, 355 U.S. 570 (1958).

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[7] Significantly, the Immunity Letter provides for use immunity but not for derivative use immunity (App. H, p. 85a). Use immunity is not constitutionally adequate without derivative use immunity, *e.g.*, *Kastigar v. U.S.*, 406 U.S. 441, *reh. den.*, 408 U.S. 931 (1972); *Katz v. United States*, 389 U.S. 347 (1967). Moreover the burden is on the State to demonstrate that no derivative use occurred *e.g.*, *Kastigar, supra; U.S. v. Kurzer*, 534 F.2d 511 (2nd Cir. 1976); *U.S. v. McDaniel*, 482 F.2d 305 (8th Cir. 1973); *U.S. v. Quatermain*, 467 F.Supp. 782 (E.D. Pa. 1979); *U.S. v. Warren*, 373 A.2d 874 (D.C. App. 1977). The State could not meet that burden in the instant case because Petitioner's information was derivatively used against him—it helped to obtain the convictions of both co-defendants, which in turn resulted in Petitioner's conviction.

In the instant case, the untruth by Petitioner occurred during the Immunity Meeting while he was not sworn (App. H, p. 85a). When he was sworn—at Riley's trial (App. G, pp. 65a-84a) and at his own trial (App. F, pp. 20a-64a)—his testimony regarding the role of both co-defendants was true, and that testimony led directly to the conviction of Riley for murder and felony murder, and significantly influenced Baxter to plead guilty to murder.

By the same token, because Petitioner's untruths were not relevant to the purpose for which the immunity was given—obtaining the conviction of the two co-defendants—the untruth should not be an excuse to void the immunity agreement. Usually, as in the instant case, the untruth would relate to the involvement of the *immunized* person, rather than involvement of the (typically) more significant targeted others. Although Petitioner's testimony directly resulted in the convictions of the two far more seriously involved co-defendants, Petitioner's immunity was revoked because he told an unsworn untruth about the extent of *his* prior knowledge of the robbery—which is entirely irrelevant to whether the co-defendants committed the homicide and robbery; and because he told an unsworn untruth about where he parked the car during the robbery—which is also entirely irrelevant to whether the co-defendants committed the homicide and robbery.

Petitioner respectfully submits that conditional use or transactional immunity that can be voided by unsworn or irrelevant untruths is not co-extensive with the scope of the privilege against self-incrimination, and that Petitioner's conviction, which resulted from information obtained from Petitioner pursuant to the conditional immunity, must therefore be reversed.

POINT IV

The State's revocation of its immunity agreement, after having obtained the full benefit of its bargain, is inconsistent with the decisions of this Court.

Immunity agreements are a legal and binding contract, and the Court frowns upon agreements in which the State receives the full benefit of its bargain and then revokes the agreement.[8]

The burden is on the State to demonstrate that the immunity is constitutionally adequate, and the burden is also on the State to indicate plainly and unequivocally when an immunity agreement is no longer in effect. In the instant case, the State advised Petitioner that he would be granted conditional and partial immunity. Notwithstanding the immediate concern expressed by the Deputy Attorney General in the Immunity Meeting that Petitioner was not being truthful (App. H, pp. 104a, 110a-111a, 114a), the State continued to obtain information from Petitioner, rather than announcing that the immunity agreement was void and telling Petitioner that he was no longer compelled to provide information.

In so doing, the State received the essence of its bargain by obtaining information from Petitioner that was sufficient to convict Riley of murder and felony murder, among other charges; and sufficient to influence Baxter to plead guilty to murder.

After the State obtained the full benefit of its bargain, the State breached the agreement by (a) indicting Petitioner for murder, robbery, and conspiracy, among other charges, and (b) using all of the information he

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[8] *Santobello v. New York*, 404 U.S. 257 (1971); *Rowe v. Griffin*, 676 F.2d 524 (11th Cir. 1982); *U.S. v. Warren*, 373 A.2d 874 (D.C. App. 1977).

provided against him, both directly by impeachment, and indirectly by using his information as leverage against both co-defendants, whose information in turn helped to secure his own conviction.

Petitioner respectfully submits that the State's revocation of its immunity agreement, after having obtained the full benefit therefrom, is inconsistent with decisions of this Court; and Petitioner's conviction, that was obtained as a direct result of the State's failure to cease its questioning as soon as the State suspected Petitioner was not being truthful, should therefore be reversed.

POINT V

The contention that Petitioner made a voluntary, knowing, and intelligent waiver of his right against self-incrimination conflicts with the decisions of this Court.

A waiver of the right against self-incrimination is ineffectual unless it is a knowing and intelligent waiver, and the burden is on the *State* to prove an effective waiver, *e.g.*, *Miranda v. Arizona*, 384 U.S. 436, *reh. den.*, 385 U.S. 890 (1966). In the instant case, there was clearly no such waiver for several reasons.

First, the immunity agreement as it ultimately evolved was so ambiguous, and it was so different from its original form in the Immunity Letter (App. H, p. 85a), that the ambiguity regarding a right of such signal importance—the right against self-incrimination—necessarily undercuts any contention that the immunity itself was understood, let alone that there was a voluntary, knowing and intelligent waiver of the immunity. The Immunity Letter provided for immunity if Petitioner did not do the shooting, was not in the

Store during the shooting, and was in the car during the shooting (App. H, p. 85a). Had the State complied with this unambiguous arrangement, Petitioner would have easily satisfied the conditions for the immunity. Because the immunity conditions were significantly modified to require truthful information regarding Petitioner's prior and subsequent knowledge of the robbery (App. H, p. 85a), confusion was the necessary result of this disparity between the written conditions and the oral conditions.[9] This Court is reluctant to find a waiver from the failure to satisfy complicated conditions or procedures, *e.g.*, *Stevens v. Marks*, 383 U.S. 234 (1966).

It is unlikely that the State can meet its burden of demonstrating that a waiver of the right against self-incrimination in the midst of such confusion could be voluntary, knowing, or intelligent because it was impossible for Petitioner to satisfy the conditions of the ultimately evolved immunity agreement—that Petitioner had no prior or subsequent knowledge of the robbery.

Moreover, even if the conditions for the immunity had not been confusing, and even if a partial transactional immunity were constitutionally permissible, the concept of a partial transactional immunity is so lacking in precedent that it is unlikely that Petitioner sufficiently understood the manner of its operation or the inherent lack of real protection to give a voluntary, knowing, and intelligent waiver of his right against self-incrimination.

Accordingly, under the circumstances of the instant case, the State cannot demonstrate that Petitioner knowingly and intelligently waived his right against self-incrimination, and Petitioner's conviction, which derived from the confusion regarding whether there was a valid waiver, should therefore be reversed.

[9] Adding to the confusion was the trauma caused when Petitioner, who had never been arrested before, was arrested in the Immunity Meeting, as discussed further in Point IX, *infra*.

POINT VI

The insufficiency of evidence regarding Petitioner's robbery and conspiracy convictions conflicts with the decisions of this Court.

The Delaware Supreme Court has held that a necessary element of a *malum in se* offense is criminal intent, in *Wilson v. State*, 303 A.2d 638 (Del. 1973). Because robbery, under 11 Del.Code §832 is a *malum in se* offense, the State must prove that Petitioner had criminal intent to rob the Store. In addition, the Delaware Supreme Court has held that a necessary element of the crime of conspiracy under 11 Del.Code §512 is intent to promote or facilitate the commission of an offense, *e.g.*, *Leasure v. State*, 385 A.2d 730 (Del. 1978).

In view of the repeated and apparently uncontested assertions by Petitioner and Baxter—the only persons other than Riley who would know—that Petitioner wanted "nothing to do" with co-defendants' activities (App. F, pp. 25a, 30a, 42a; App. G, pp. 73a, 76a), these elements were clearly lacking. Thus, Petitioner's constitutional rights to due process, as secured by the State of Delaware and by the Fifth Amendment through Section 1 of the Fourteenth Amendment, were violated by the convictions in the absence of these two key elements, and the convictions should be reversed.

POINT VII

The use against Petitioner of statements made by him during the Immunity Meeting conflicts with Rule 410 of the Delaware Rules of Evidence.

Petitioner argued that Rule 410 of the Delaware Rules of Evidence ("Rule 410") (App. L, p. 119a), which is identical, for this purpose, to Rule 410 of the Federal Rules of Evidence, makes plea bargaining discussions inadmissible into evidence. The properly administered plea bargaining that this Court encourages to streamline the judicial process, *e.g., Santobello v. New York,* 404 U.S. 257 (1971), would rarely be fruitful if defendants were concerned that their discussions could later be used against them. Accordingly, Rule 410 places the burden on the State to demonstrate that plea bargaining discussions are admissible, *e.g., U.S. v. Herman,* 544 F.2d 791 (5th Cir. 1977).

Because of indications from the transcript that the Immunity Meeting was, in part, a plea bargaining session (App. H, pp. 91a-92a), the Delaware Supreme Court erred when it, in effect, held that the burden was on Petitioner to demonstrate that his discussions were plea bargaining for the purposes of Rule 410 (App. E, pp. 11a-12a). In addition, the Delaware Supreme Court erred when it held that Petitioner's violation of his agreement to tell the truth superseded the applicability of Rule 410 (App. E, pp. 12a-13a). Even if the discussions were admissible because of a false statement, they would be admissible only in relation to charges of perjury or contempt, and then only if the false statements had been given under oath, as the Rule clearly states. The statements in the Immunity Meeting, however were not given under oath.

Finally, the Delaware Supreme Court erred in holding that Petitioner's admissions in Riley's trial that he lied constituted "a waiver of the confidentiality" of his statements during the Immunity Meeting, drawing a comparison to a waiver of the attorney-client privilege (App. E, p. 13a). Rule 410 relates to admissibility, not confidentiality, and there is no authority for the proposition that a party's failure to object to the admissibility of evidence in one context forecloses the party's ability to object to the same evidence in another context.

Accordingly, Petitioner respectfully submits that the conviction should be reversed because the Delaware Supreme Court erred in its construction of Rule 410 in a manner that is inconsistent, in principle, with the decisions of this Court.

POINT VIII

The decision of the Court below, that the misconduct by two jurors did not prejudice Petitioner, conflicts with the decisions of this Court.

Petitioner has a Sixth Amendment right to a trial by an impartial jury,[10] and that right is extended to the present context by Section 1 of the Fourteenth Amendment, *e.g.*, *Ristaino v. Ross*, 424 U.S. 589 (1976). The fact that two of the jurors in the *voir dire* in Petitioner's trial concealed from the court their knowledge of and relationship with Riley (who had just received a death sentence on the strength of Petitioner's testimony) and a key State witness, abundantly demonstrated that Petitioner could not have had an impartial trial. Once there is an adequate demonstration of extrinsic influence upon the jury, as there is in the

[10] *Turner v. State of Louisiana*, 379 U.S. 466 (1965); *Irvin v. Dowd*, 366 U.S. 717 (1961); *Remmer v. U.S.*, 347 U.S. 227 (1954).

instant case, with the Superior Court having concluded that two of the jurors knew one of the witnesses and Riley (App. E, p. 15a), the burden shifts to the *State* to demonstrate that this extrinsic influence was *not* prejudicial, *e.g., U.S. v. O'Keefe,* 722 F.2d 1175 (5th Cir. 1984).

Prior knowledge by a juror of the defendant is a common reason for reversing a conviction for juror misconduct.[11] In addition, concealment by jurors in *voir dire* should at least raise a question regarding the jurors' motives and whether that motive may be prejudicial to a defendant, especially where, as here, at least one juror knew Riley, who had just been given a death sentence as a result of Petitioner's testimony. The two factors of knowledge and concealment in combination should clearly have warranted a new trial. Instead, the Superior Court and the Delaware Supreme Court inexplicably found that the taint would be *favorable* to Petitioner (App. E, p. 15a).

Petitioner respectfully submits that the decision by the courts below, that there was no prejudice in the two jurors' concealment of their knowledge of key adverse witnesses, is clearly inconsistent with decisions of this Court; and Petitioner's conviction by a jury that was *not* impartial should therefore be reversed.

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[11] *U.S. v. Howard,* 506 F.2d 865 (5th Cir. 1975); *U.S. ex rel. Owen v. McMann,* 435 F.2d 813 (2nd Cir.), *cert. denied,* 402 U.S. 906 (1971). Other reasons for reversing a conviction for juror misconduct include extensive, bitter publicity, *Irvin v. Dowd,* 366 U.S. 717 (1961); evidence found by jurors unbeknownst to the attorneys, *Forese v. U.S.,* 428 F.2d 178 (5th Cir. 1970); and witnesses who were the sheriffs in charge of the jury, *Turner v. Louisiana,* 379 U.S. 466 (1965).

POINT IX

The assistance of Petitioner's counsel below was not reasonably adequate and conflicts with decisions of this Court.

In *Strickland v. Washington*, 104 S.Ct. 2052 (1984), this Court held that a defendant has not received effective assistance of counsel, as required by the Sixth Amendment, when (a) counsel's performance, considering all of the circumstances, fell outside of the "wide range of reasonable professional assistance," *Id.*, at 2066, and (b) there is a reasonable probability, sufficient to undermine confidence in the outcome, that the outcome would have been different but for counsel's unprofessional conduct. This Sixth Amendment right applies to the states by way of Section 1 of the Fourteenth Amendment, *e.g.*, *Burgett v. Texas*, 389 U.S. 109 (1967). The following discussion enumerates at least *fourteen* specific major deficiencies by Petitioner's counsel below that were well outside the wide range of reasonable professional assistance, each of which alone changed the outcome of Petitioner's trial.

The Immunity Agreement

Several actions by Petitioner's counsel in relation to the Immunity Meeting demonstrated incompetence. First, Petitioner did not know that he was going to be arrested at the Immunity Meeting (App. F, p. 50a), but Petitioner's counsel apparently *did* know (App. H, p. 87a). Petitioner's counsel should never have allowed Petitioner to go to the Immunity Meeting without being told that he would be arrested. Because Petitioner had never been arrested before, the arrest was such a traumatic event that it tainted his understanding of the remainder of the Immunity Meeting. In the state of

shock that must have resulted for Petitioner, he could not have fully understood the impact of what was happening, and accordingly, he relied unquestionably upon his counsel. The fact of being arrested at a meeting with his mother, the police, the Deputy Attorney General, and a court reporter present, along with repeated references to the Immunity Meeting being his last chance to avoid going to jail for 37 years (*e.g.*, App. H, pp. 88a-90a), was so intimidating to Petitioner that it raises a serious issue of coercion with respect to his consent to the immunity agreement and to waiving his privilege against self-incrimination.

Second, had the agreement been as described in the Immunity Letter (App. H, p. 85a), Petitioner would have had use and transactional immunity, and no robbery or conspiracy charges could ever have been brought against him because he did not do the shooting and he was not in the Store at the time of the shooting. Instead, Petitioner's own counsel made compliance substantially more difficult by conditioning the agreement upon Petitioner having no prior or subsequent knowledge of the robbery (App. H, pp. 86a-87a). This change clearly inured to Petitioner's substantial prejudice and detriment because it was impossible for Petitioner to satisfy the more difficult conditions, and the change, therefore, directly resulted in his conviction for robbery and conspiracy.[12]

[12] Not even the State, let alone Petitioner's own counsel, could have legitimately sought the more difficult conditions of compliance because Petitioner's prior or subsequent knowledge of the robbery has no relevance to the State's primary purpose for granting Petitioner immunity—namely, obtaining convictions for murder against both co-defendants.

Third, because the handwritten additions to the Immunity Letter were apparently made on the day of the Immunity Meeting (App. H, p. 85a), Petitioner's counsel apparently agreed to the more difficult conditions to compliance without first consulting with Petitioner. Had Petitioner's counsel ascertained and explained *all* of the conditions to him before he agreed tc the terms of the immunity agreement, Petitioner would not have agreed to the immunity conditions because he would have known *before* the Immunity Meeting that he *could* satisfy all of the conditions in the Immunity Letter, but he could *not* satisfy the additional conditions.

Fourth, Petitioner's counsel should never have permitted an agreement that could be voided by unsworn information or by information that was not relevant to the State's purpose of obtaining convictions for murder against both co-defendants. The information from which the State apparently considered the immunity agreement to be void was both unsworn and irrelevant to the State's purpose for granting the immunity. Had the immunity agreement been limited to relevant information (as was the Immunity Letter) and to sworn information, Petitioner would never have been convicted because Petitioner's sworn testimony about the involvement of both co-defendants was true and resulted in their conviction.

Fifth, Petitioner's counsel should have determined with certainty whether the offer "not to proceed with any charges," constituted a total transactional immunity (App. H, p. 85a), as discussed in Point I, *supra*. If the immunity was not total, Petitioner's counsel should never have permitted an agreement that purported to provide immunity with respect to the murder, but not with respect to the intimately related robbery and

conspiracy, because it is impossible for Petitioner to discuss one without incriminating himself in relation to the other two. Had the immunity been total, rather than partial, Petitioner could not have been convicted.

Sixth, Petitioner's counsel should have challenged, as constitutionally inadequate, the reference in the Immunity Letter to use immunity without any reference to *derivative* use immunity. As discussed in Point II, *supra*, use immunity is not constitutionally sufficient without derivative use immunity.

Seventh, Petitioner's counsel should never have allowed Petitioner to make a statement directly to the State before the immunity was actually granted. Instead, Petitioner's *counsel* should have made a proffer to the State of Petitioner's testimony, from which the State could have decided whether immunity was worthwhile. With a proffer, there would have been no statement directly from Petitioner that could later be used against Petitioner if the immunity negotiations failed.[13]

Eighth, because the immunity agreement, as it evolved in the Immunity Meeting, was conditioned upon the truth of the information, Petitioner's counsel should have stopped the discussions *immediately*, and he should have determined unequivocally whether the State considered the agreement to be void, when the Deputy Attorney General first expressed doubts about the truth of the information Petitioner provided (App. H, p. 104a). Not only did Petitioner's counsel allow Petitioner to continue

[13] Moreover, such a proffer would have assured the truth of any information given directly by Petitioner because the State would have informed Petitioner's counsel of its suspicions from the proffer, whereupon either (a) the suspected untruths would have been corrected before Petitioner provided information directly, or (b) no immunity would have been granted and Petitioner would not have provided any information directly that could be used against him.

giving self-incriminating information at the Meeting, he also allowed Petitioner to provide additional assistance, including visiting the scene of the crime with the police on the day of the Immunity Meeting to answer more questions.

Ninth, Petitioner's counsel should have clarified whether the Immunity Meeting was a plea bargaining session (from which all negotiations would be inadmissible under Rule 410 even if the immunity agreement failed) or solely a discussion of immunity. The failure by Petitioner's counsel to determine that Rule 410 would make the discussions inadmissible resulted in the use of the transcript of the Immunity Meeting to impeach Petitioner (App. E, pp. 9a-13a). Moreover, while Petitioner's counsel warned him at the Immunity Meeting that his statements could be used to convict him (App. H, pp. 86a-87a, 90a), Petitioner's counsel later inconsistently argued to the Superior Court and the Delaware Supreme Court that Petitioner's statements at the Immunity Meeting were inadmissible under Rule 410 (App. E, p. 9a). Not surprisingly in the face of this inconsistency (noted by the Delaware Supreme Court at App. E, p. 8a), this argument did not prevail, with the result that Petitioner's conviction was upheld.

Thus, Petitioner would not have been convicted had the Immunity Meeting been handled properly by his counsel, and had the terms of the Immunity Letter prevailed.

The Trials

Petitioner also would not have been convicted but for several errors by his counsel in Riley's trial and in Petitioner's own trial. First, Petitioner's counsel knew that Petitioner's testimony was important for

the conviction of Riley because there were no eyewitnesses and the gun was never found. Under those circumstances, Petitioner's counsel should not have allowed Petitioner to testify in Riley's trial without *complete* use and transactional immunity in relation to murder, robbery, and conspiracy. Despite the lack of any immunity, and with only an agreement to enter a *nolle prosequis* on the murder (but not the robbery or conspiracy) charges, Petitioner's counsel allowed him to testify in the Riley trial (App. G, p. 67a). As a result, Petitioner's testimony resulted in the conviction of Riley, which in turn caused Baxter to plead guilty to murder and testify in Petitioner's trial, which in turn caused Petitioner's conviction.

Second, Petitioner's counsel should not have allowed Petitioner to testify in his own trial. Had Petitioner not testified, the falsity of the information he provided at the Immunity Meeting could not have been used to impeach him, and Baxter's assertions that Petitioner wanted "nothing to do with it" (App. F, pp. 25a, 30a, 42a) would have been sufficient to negate (a) the specific intent that is necessary for a conviction for robbery, and (b) the agreement that is necessary for conspiracy. Instead, Petitioner's own testimony significantly worsened his case.

Third, Petitioner's counsel should have taken steps to prevent the use in Riley's trial of Petitioner's unsworn statements in the Immunity Meeting (App. G, p. 80a), at least by interposing an objection. The use of the statements in Riley's trial opened the door to their use in Petitioner's trial to impeach him (App. F, p. 65a), which resulted in his conviction.[14]

[14] This failure to object also reflects badly upon Petitioner's counsel because it may have constituted a waiver of whatever rights against self-incrimination Petitioner may have had, *e.g.*, *Burrell v. Montana*, 194 U.S. 572 (1904).

Fourth, Petitioner's counsel should have presented the extensive constitutional arguments (as presented in this Petition) regarding the use and derivative use[15] against Petitioner of the unsworn Immunity Meeting discussions. Instead, his counsel relied exclusively on the Rule 408 and Rule 410 evidentiary arguments about the admissibility of plea bargaining negotiations and other discussions. Thus, these significant constitutional arguments are being made for the first time in this Petition.

Fifth, repeated and uncontested assertions by Baxter clearly indicated the Petitioner wanted "nothing to do with it" (App. F, pp. 25a, 30a, 42a) and were sufficient to negate both specific intent and agreement. Petitioner's counsel should therefore have argued to the Delaware Supreme Court that the Superior Court had insufficient evidence on which to find that Petitioner had the requisite specific intent for robbery, or that he had entered into the requisite agreement for conspiracy. There is no indication in the opinion of the Delaware Supreme Court that this issue was presented in the appeal (App. E).

Petitioner respectfully submits that the handling of this case below by Petitioner's counsel was so deficient under the Sixth Amendment standards established by the decisions of this Court, and that each deficiency alone so "undermine[d] the confidence in the outcome," *Strickland* at 2068, that Petitioner's conviction should be reversed.

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[15] The derivative use results from the fact that Petitioner's testimony was used to obtain the conviction of Riley, which in turn caused Baxter to plead guilty to murder and testify against Petitioner, which in turn resulted in Petitioner's conviction.

Conclusion

For the foregoing reasons, Petitioner respectfully submits that the writ of certiorari requested herein should be granted and Petitioner's conviction should be reversed.

Respectfully submitted,

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APPENDIX A

Docket Entry

IN THE
SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL A. WILLIAMS,

vs.

STATE OF DELAWARE.

No. 340, 1983
Cr.A. Nos. IK-82-05-0079 and 0080.
Superior Court
Kent County

The following docket entry has been made in the above cause.

34. April 12. Record and mandate to clerk of court below. Case closed.

cc: The Honorable Bernard Balick
Robert Wolhar, Esq.
Theophilus R. Nix, Esq.
Gary A. Myers, Esq.

Prothonotary
Received Above

By _____

Date _____

/s/ THOMAS I. BARROWS
Clerk

Date: 4/12/85

APPENDIX B

Order Denying Rehearing *En Banc*

IN THE
SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL A. WILLIAMS,
Defendant Below, Appellant,

vs.

STATE OF DELAWARE,
Plaintiff Below, Appellee.

No. 340, 1983

Submitted: March 25, 1985
Decided: April 10, 1985

Before HERRMANN, Chief Justice, McNEILLY, HORSEY, MOORE, and CHRISTIE, Justices, constituting the Court *en banc.*

ORDER DENYING REHEARING EN BANC

This 10th day of April, 1985, it is ordered that appellant's motion for rehearing *en banc* is

DENIED.

BY THE COURT:

/s/ ANDREW D. CHRISTIE
Justice

APPENDIX C

Order Denying Reargument

IN THE
SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL A. WILLIAMS,
Defendant Below, Appellant,

vs.

STATE OF DELAWARE,
Plaintiff Below, Appellee.

No. 340, 1983

Submitted: March 25, 1985
Decided: April 10, 1985

Before HERRMANN, Chief Justice, HORSEY and CHRISTIE, Justices.

ORDER DENYING REARGUMENT

This 10th day of April, 1985, the Court having considered appellant's motion for reargument and having concluded that the same is without merit for the reasons set forth in this Court's opinion dated March 8, 1985.

NOW, THEREFORE, IT IS ORDERED that the motion for reargument is

DENIED.

BY THE COURT:

/s/ ANDREW D. CHRISTIE
Justice

APPENDIX D

Mandate

#34

THE SUPREME COURT OF THE
STATE OF DELAWARE

TO THE HONORABLE JUDGES OF

Superior Court of the State of Delaware in and for Kent County:

GREETING:

WHEREAS, before you or some of you in a cause entitled as follows:

STATE OF DELAWARE

vs.

MICHAEL A. WILLIAMS

Cr.A. Nos. IK-82-05-0079 and 0080.

a certain judgement or order was entered on the 8th day of November 1983, to which reference is hereby made; and

WHEREAS, by appropriate proceedings the said cause was duly appealed to this Court and after hearing has been finally determined, as appears from the opinion of this Court filed in the cause on March 8 1985, a certified copy of which is attached hereto;

ON CONSIDERATION WHEREOF IT IS ORDERED AND ADJUDGED that the said judgement or order be and it is hereby affirmed.

WITNESS the Honorable D. L. Herrmann our Chief Justice, at Dover, the First day of January, A. D. 1985.

Issued April 12, 1985
Supreme Court No. 340, 1983

/s/ THOMAS I. BARROWS
Clerk of the Supreme Court

APPENDIX E

Opinion

IN THE
SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL A. WILLIAMS,
Defendant Below, Appellant,

vs.

STATE OF DELAWARE,
Plaintiff Below, Appellee.

No. 340, 1983

Court Below—Superior Court of the State of Delaware, in and for Kent County: Cr. A. Nos. IK82-05-0079, 0080.

Submitted: September 26, 1984
Decided: March 8, 1985

Before HERRMANN, Chief Justice, HORSEY and CHRISTIE, Justices.

Upon appeal from the Superior Court of the State of Delaware, in and for Kent County. Affirmed.

Robert C. Wolhar, Jr., (argued), Wolhar & Moore, P.A., Georgetown, and Theophilus R. Nix, Wilmington, for appellant.

Gary A. Myers, Deputy Attorney General, Georgetown, for appellee.

CHRISTIE, Justice:

[2] In April of 1983, defendant was found guilty of first degree robbery and second degree conspiracy by a jury in Kent County Superior Court. On appeal defendant asserts that prejudicial errors occurred during his trial, and that he is entitled to a new trial.

The record contains evidence which would support the following account of the pertinent facts. On February 8, 1982, defendant received a telephone call from a friend by the name of Tyrone Baxter, who inquired as to whether defendant would drive him to the bus station at State Road, Delaware. After Baxter offered to pay for defendant's gas, defendant told Baxter to call back an hour later, when he had finished cleaning his car. When Baxter called back defendant agreed to do the requested driving.

When defendant arrived at Baxter's home at about noon, he was introduced, for the first time, to James Riley. Defendant testified that while at the house, Baxter showed him a gun he had been keeping in his basement.

Later, as defendant was driving Baxter and Riley to the bus station, Baxter asked defendant to stop at a nearby liquor store. As they approached the liquor store, Baxter stated that he and Riley needed to make some money, and they (Baxter and Riley) discussed robbing someone among themselves. Defendant overheard this discussion, and stated that he wanted no part in their activities. Nevertheless, defendant continued to drive, and he parked at an apartment building near the Sandbar Liquor Store. Defendant testified that he then tried to visit a friend [3] who lived in the apartment building but, since the friend was not at home, defendant

returned to his car. In the meantime, Baxter and Riley went to the liquor store and robbed the proprietor. In the process, Riley shot the proprietor.

Defendant was in the car when Riley and Baxter returned from the liquor store. The pair told defendant that they had taken some money and shot the proprietor. Defendant then drove them to the bus station, where the two men changed clothes. Baxter paid defendant $20 for his gas expenses. Baxter later warned defendant not to discuss the incident with anyone, or defendant would then be implicated in the crime.

About ten weeks later, defendant's mother was questioned by the police. Defendant then retained an attorney, who contacted the prosecutor in an effort to gain some favorable treatment for his client in return for defendant's cooperation with the prosecution.

According to a letter signed by the prosecutor and dated May 3, 1982 (subsequently amended on May 8, 1982), defendant and the prosecution made an agreement. The State was to grant defendant "use and transactional immunity" as to possible homicide charges, if he was not, in fact, directly involved in the murder. The State made it clear that it was not then agreeing to grant immunity as to the robbery or the conspiracy charge. However, the prosecutor did agree to dismiss the latter charges if defendant subsequently passed a lie detector test indicating his lack of participation in the robbery. Finally, defendant and the [4] prosecutor agreed that if defendant gave what turned out to be false information to the prosecutor, the "deal" would be voided.

Appendix E—Opinion.

On May 8, 1982 defendant, his attorney, and his mother met with the prosecutors and detectives assigned to defendant's case. In a recorded conversation, defendant's attorney first read the letter summarized, in part, above, and then explained the implications of the agreement to defendant. He told defendant that:

> Any statement that you make today pertaining to the Feeley incident will relate not only to the murder but also to the robbery and conspiracy. That means that any statement you make regarding the matter at all can be used against you in the robbery or the conspiracy charge and it can be used in a court of law and since an attorney is present and advising you the chances are that you will not be able to attack any statements that you make . . . if that polygraph shows your lack of knowledge with respect to that incident, the State will not prosecute you for the robbery and conspiracy; if, however, the polygraph examination shows that you were being deceptive, you're not telling the truth about your knowledge or if you are in fact lying about your knowledge, that information can be used, I assume, in a court of law against you and the State will proceed with the robbery and conspiracy charges. Do you understand that? [Defendant responded], "Yes, sir."

Similar instructions were repeated by defense counsel and the prosecutor several times during the course of this discussion. Defendant then proceeded to give, what he asserted, was a truthful account of the commission of the crimes and his limited participation.

[5] On June 7, 1982 defendant was formally charged with two counts of first degree murder, robbery, conspiracy, and possession of a deadly weapon during the commission of a felony. Defendant pleaded not guilty to all charges.

Defendant was subsequently called upon to testify at the Riley trial. In return for his agreement to testify, the State entered *nolle prosequis* as to the two murder charges and the weapons charge then pending against the defendant. At the Riley trial, defendant testified as to the extent of his involvement in the crimes. He admitted, under oath, that he had lied when he gave his prior statement to the prosecutor at the May 8 meeting.

Defendant was subsequently tried and found guilty of robbery and conspiracy to commit robbery. During defendant's trial the State offered, as an exhibit, defendant's prior testimony at the Riley trial, in which defendant had referred to the statement he had made on May 8 and admitted lying during that "plea negotiation" with the State prosecutors.

Defendant initially asserts that the trial judge erred as a matter of law, when he ruled that statements made by defendant to the prosecutors during what was alleged to have been "plea negotiations", could be used in a limited context in the State's case against defendant. Defendant insisted that [6] the statements themselves, and any reference to them, were inadmissible under D.R.E. 410.[1]

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[1] Defendant also asserts that these statements are inadmissible under D.R.E. 408, but it is apparent that the rule is so worded as to apply only to civil cases. Furthermore, even if the rule were applicable, the evidence in question would not be excluded under the terms thereof because of the limited purpose for which the evidence was offered (to attack defendant's credibility).

Appendix E—Opinion.

D.R.E. 410 provides the following:

> Except as otherwise provided in this rule, evidence of a plea of guilty later withdrawn with court permission, or a plea of nolo contendere, or of any offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

The Supreme Court has indicated that when properly administered, plea bargaining is an essential component in the administration of justice. *Santobello v. New York*, 404 U.S. 257, 260, 92 S.Ct. 495, 498, 30 L.Ed.2d 427 (1971). D.R.E. 410 seeks to foster candid discussion by the defendant, and thereby encourages proper plea negotiations and the resolution of criminal [7] charges by means of a consensual agreement. *United States v. Herman*, 544 F.2d 791 (5th Cir. 1977). Such objectives would be difficult to realize if each defendant were concerned that statements made in the course of negotiating an agreement might later be used against him in court. *United States v. Herman*, 544 F.2d at 797;

United States v. Verdoorn, 528 F.2d 103, 107 (8th Cir. 1976). Although D.R.E. 410 must be applied with a view to the apparent legislative intent of encouraging plea negotiations, the scope of the rule does have some limits.

In determining whether discussions, such as those which took place in this case, are to be regarded as "plea negotiations" within the meaning of rules corresponding to D.R.E. 410, courts have considered whether the defendant had an actual subjective expectation to negotiate a plea at the time he made his statements and whether that expectation was a reasonable one. *United States v. Robertson*, 582 F.2d 1356 (5th Cir. 1978). As part of this evaluation, courts will examine the *quid pro quo* of the negotiating process to insure that each party has actually given something of value for what he received in return. *United States v. Geders*, 566 F.2d 1227 (5th Cir. 1978); *United States v. Cross*, 638 F.2d 1375 (5th Cir. 1981).

It is argued here that the basic tenor of the May 8 discussions was that of a plea negotiation. Defendant was indeed hoping for concessions (in the form of immunity as to the murder charge and dismissal of the remaining counts) in exchange for his truthful testimony concerning his actions and those of his [8] co-defendants. We accept defendant's position that he entertained a reasonable expectation that the statements he gave the prosecutor would have been inadmissible, if truthful. But therein lies the obstacle which defendant cannot overcome. His own counsel explicitly stated at the start of his conversation with the government, that if any of his statements about the robbery and conspiracy were not truthful, such statements could, in and of

themselves, be sufficient to convict him. This important observation was repeated by defense counsel and the State prosecutor at least two additional times during this conversation. Moreover, defendant had been fully apprised as to all possible consequences of his failure to speak truthfully, and the voluntary nature of his statements was never challenged by him. Therefore, the unambiguous agreement entered into between the State and defendant, to which all parties voluntarily consented, was conditional upon the accuracy of defendant's statements.[2] The statements were not a part of the negotiation process; rather, they were part and parcel of what the State bargained for. If Defendant's statements were subsequently discovered to be false, [9] the agreement clearly contemplated the State's use of those statements at defendant's trial.

Such an agreement amounts to a contract between the parties, which can supercede the applicability of D.R.E. 410. *United States v. Stirling*, 571 F.2d 708, 732 (2d Cir. 1978). Defendant's subsequent breach of that agreement brought into play, under the terms of the agreement, what amounted to a waiver of the exclusionary provisions of D.R.E. 410.

Our ruling in no way undercuts the rule. We only hold that because defendant did not fulfill his part of the "deal", he is, according to the very terms of his own agreement, (as it was clearly explained to him) no longer

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[2] Indeed one court has indicated that regardless of the explicit terms agreed to it is implied that:

> As a precondition of the plea bargain, the accused is required to be truthful about his own complicity—*i.e.* to acknowledge his guilt. *United States v. Mannino*, 551 F.Supp. 13, 21 (SDNY 1982).

entitled to the protections afforded by D.R.E. 410. The protections of D.R.E. 410 are designed to encourage candid dialogue in plea discussions. Here defendant admitted that he lied under circumstances in which he had been warned that, if he lied, his statements could be used against him. The policies underlying D.R.E. 410 would not be furthered by protecting such deliberate, untruthful statements.

It should be pointed out, however, that the statements defendant actually made pursuant to the agreement on May 8, 1982 were never admitted into evidence against him. These statements were merely referred to during defendant's testimony at the trial of James Riley. At that time defendant admitted that he lied during his May 8, 1982 meeting with the prosecutors. This admission, under oath and with the benefit of the advice [10] of defendant's counsel (who was "in and out of those" proceedings) constituted a waiver of the confidentiality of his prior statements. The State, moreover, merely sought to use defendant's admission that he had lied to the prosecutors to impeach defendant's credibility, and the fact that he had admitted lying precludes a ruling by this Court that such a statement was inadmissible.[3]

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[3] An analogous situation is presented in the attorney/client privilege context.

> The fact that a defendant testifies in his own behalf does not effect a waiver of the [attorney client] privilege. But if, in testifying, he refers to a communication with his attorney, he thereby waives the privileged character of such communication, particularly where his testimony reflects upon the attorney. Likewise, an accomplice, who testifies for the prosecution in such a way as to incriminate himself as well as others, thereby waives the privileged character of communications with his attorney.

See Wharton's Criminal Evidence §561, at 82-84. (13th Ed. 1973).

II

After the jury had returned its guilty verdicts, defendant moved for a new trial, asserting that two jurors knew a defense witness. The trial judge conducted an evidentiary hearing to explore the allegations made by defendant. At this hearing, the trial witness testified that she was well acquainted with, and in fact related to, two jurors who had served on the jury panel. Because it then appeared that the two jurors referred [11] to had not responded truthfully to questions posed on pre-trial *voir dire,*[4] the court scheduled a hearing at which these jurors were examined. The hearing was conducted in accordance with the procedures outlined in Superior Court Criminal Rule 24(a).[5] The judge informed the respective parties that he would ask the majority of the questions and would consider any proposed questions or other input from either party.

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[4] During *voir dire* examination a list of all prospective witnesses is read to the venire. Members of the jury panel are then asked whether they recognize any of the names mentioned, and if so, to indicate that to the court.

[5] The pertinent part of the Superior Court Rule reads as follows:

RULE 24. TRIAL JURORS

(a) Examination. In addition to any examination required by statute, the Court shall permit or conduct such examination as is reasonably calculated to ascertain prejudice of a juror. The Court may permit the defendant or his attorney and the Attorney General to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the Court shall permit the defendant or his attorney and the Attorney General to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper. All questions proposed by an attorney to be used in *voir dire* examination shall be submitted to the Court in writing before commencement of the drawing of the jury or at such other time as ordered by the Court.

At the hearing, defense counsel submitted a list of proposed questions, and the court explained the procedures which would be followed:

> What I would propose to do is call the jurors in, question them and then if counsel have [12] any particular points that you think have not been covered you can write them on a yellow pad and hand them up when I am done and I will consider further questioning.

The judge proceeded to conduct an examination of these jurors, inquiring with particularity into any possible familiarity with the witness in question. During its inquiries the court permitted defense counsel to submit additional questions. Only repetitive questions were prohibited.

One of the jurors testified that she had no familiarity with the witness in question. The other juror stated that although he did not recognize the witness' name, her face was familiar. However, the juror was confident that the limited knowledge which he possessed had not influenced the weight which he accorded her testimony.

The trial court denied defendant's motion for a new trial. Among the reasons given for the ruling was the court's finding that the witness who said she was well acquainted with the two jurors was not a reliable witness.

The court also observed that if either of the jurors was, in fact, related to or acquainted with the defense witness, these jurors would be more inclined to receive this witness' testimony in a light more favorable to the defendant. Apparently, it was for this reason that

members of defendant's family (who also believed that the defense witness knew the jurors in question) waited until after the guilty verdicts to bring such concerns to the court's attention.

[13] Most persuasive, however, was the fact that the defense witness in question had testified during the trial as to matters which were never disputed by the State, *i.e.* that Baxter and Riley were the active participants in these crimes. Consequently, even if some relationship between the jurors and the witness had been established, the prejudicial effect, if any, was likely to have been insignificant.

Defendant asserts, however, that the trial court erred in failing to conduct a more extensive evidentiary hearing as to possible juror bias based on their relationship with the witness. Relying on an order issued by this Court in *Hughes v. State*, Del. Supr., No. 260, 1983, Herrmann, C.J. (Oct. 31, 1983) (Order), defense counsel insist that they should have been allowed to examine and cross-examine the jurors personally.

We hold that defendant's reliance on *Hughes* is misplaced. The procedures which were mandated by this Court in that case were employed to deal with a unique situation. They were not intended to set a standard to be employed in all post-verdict hearings. It is our opinion that the *voir dire* procedures employed by the trial court in this case were adequate. The court permitted defense counsel to submit questions and to personally explore valid areas of concern. Furthermore, defendant has failed to suggest any particular matters that were not addressed by the court. There is no indication that he was prejudiced in any way by the limitations placed upon counsel during the proceedings.

[14] Defendant also asserts that the testimony of the jurors at the post-verdict hearing indicated that one or both jurors had failed to disclose their relationship with the defense witness, and that this failure warranted the granting of a new trial. We find this argument to be entirely without merit.

Courts are extremely hesitant to delve into the sanctity of a jury's verdict. *Barnes v. Toppin*, Del. Supr. 482 A.2d 749 (1984); *Styler v. State*, Del. Supr., 417 A.2d 948 (1980). However, after hearing the testimony of the defense witness, the trial judge agreed to examine certain jurors. We have already ruled that the nature and scope of these proceedings were adequate.

A trial judge has the unique opportunity to observe the demeanor of each witness and to evaluate his or her credibility. Determinations by a trial judge as to the eligibility of jurors to serve (or to have served) are entitled to great deference by appellate courts and are not reversed absent an abuse of the very broad discretion afforded trial judges in making such decisions. *See Dutton v. State*, Del. Supr., 452 A.2d 127, 144 (1982); and *Styler v. State*, Del. Supr., 417 A.2d 948, 953 (1980). Here the trial judge carefully considered and evaluated the conflicting testimony. He decided that the jurors' testimony was worthy of belief and that some of what the defense witness said was not worthy of belief. That conclusion was adequately supported by the record and the ruling of the judge did not amount to error or an abuse of discretion.

[15] III

Another contention presented by defendant is that certain remarks made by the prosecutor in his rebuttal summation were prejudicial to defendant and constituted reversible error. In particular, defendant objects to the prosecutor's assertions that defense counsel had not acted in good faith in stating his opinion of the facts and circumstances surrounding this case.

In our consideration of allegations of improper prosecutorial comment, this Court has noted that only those statements which prejudicially affect the accused's substantial rights to a fair trial will require reversal. *Sexton v. State*, Del. Supr., 397 A.2d 540, 544 (1979). In the present situation, the prosecutor's comment appeared to impugn the credibility of defense counsel and not that of the defendant himself. The remark was inappropriate, but, under the circumstances, the danger of prejudice to defendant, if any, was minimal. When evaluated within the context of the State's entire summation, this isolated, single comment cannot be said to amount to reversible error.

IV

Defendant finally asserts that the trial court erred as a matter of law when it denied defendant's motion for judgment of acquittal. Defendant insists that the evidence did not support the jury's guilty verdict and must, therefore, be overturned by this Court. This contention is without merit.

[16] When deciding motions for acquittal, the trial court must consider the evidence and all reasonable inferences to be drawn thereon, but these factors must be evaluated in the light most favorable to the State. *Edwards v. State,* Del. Supr., 285 A.2d 805 (1971). Considered in this context, a jury's verdict will be overturned only if the State has failed to offer sufficient evidence to sustain a verdict of guilt. *Conyers v. State,* Del. Supr., 396 A.2d 157, 160 (1978); *Vouras v. State,* Del. Supr., 452 A.2d 1165, 1169 (1982). The evidence presented in this case, as previously outlined herein, is deemed to be sufficient to support a verdict that defendant was guilty of robbery and of conspiracy to commit robbery. Therefore, the Superior Court did not err when it denied defendant's motion for judgment of acquittal.

* * * * *

Defendant's convictions are

AFFIRMED.

APPENDIX F

Excerpts of Transcript of Trial Dated April 25 and 26, 1983

IN THE
SUPERIOR COURT OF THE STATE OF DELAWARE

In and for Kent County

THE STATE OF DELAWARE,

vs.

MICHAEL A. WILLIAMS,

Defendant.

Criminal Action Nos.
IK 82-05-0079
IK 82-05-0080

Trial: April 25 and 26, 1983

Before:
HON. BERNARD BALICK, *J.*, and a jury.

Appearances:
James E. Liguori, Esq.,
Deputy Attorney General
on behalf of the State of Delaware.

Wolhar & Moore
By: Robert Wolhar, Esq.,
on behalf of the Defendant.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

TRANSCRIPT OF TRIAL RECORD

[2] *INDEX TO TESTIMONY*

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Martin F. Stallings	22			
Steve Haines	25	29		
Tyrone Baxter	33	42	51 54	53
John Charles Sigler	55			
DEFENDANT'S EVIDENCE				
Paulette Winkfield	63	66		
Michael Anthony Williams	67	86	110	112
STATE'S REBUTTAL EVIDENCE				
John Charles Sigler (recalled)	114	114	117 118	118

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STATE'S, RECEIVED IN EVIDENCE, Cont'd.		
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Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

[33] * * *

The Court: Bring in the jury.

(The jury returned to the courtroom.)

Mr. Liguori: State calls Debby Mitchell.

Reading of State's Exhibit No. 7 was reported by Linda Lavender, Official Court Reporter, Kent County, State of Delaware.)

The Court: Call the next witness.

Mr. Liguori: Tyrone Baxter.

TYRONE BAXTER

TYRONE BAXTER, called as a witness on the part and behalf of the State, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Liguori:

Q. Mr. Baxter, you have pled guilty to murder in the first degree, correct? A. Yes.

Q. And you are spending the rest of your natural life in jail; is that correct? A. Yes.

Q. And you are now today represented by Mr. Werb; is that correct? A. Yes, I am.

[34] Q. You had previously been represented by Mr. Lally of the Public Defender's Office; is that correct? A. Yes.

Q. In exchange for pleading to one sentence of life in jail, other sentences were dropped, other charges were dropped against you; is that correct? A. Yes, they were.

Q. And you were going to testify at the trial of your codefendants; is that correct? A. Yes, it is.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. What I want to do is I want to take you to February 8, 1982, the day Mr. Feeley was shot and killed. Who drove you to the liquor store? A. Michael Williams.

Q. Do you see Michael Williams here today? A. Yes, I do.

Q. Point him out to the ladies and gentlemen of the jury. A. He is over here to the left (indicating).

Q. The black man in the white suit? A. Yes.

Mr. Liguori: Let the record reflect the [35] defendant.

By Mr. Liguori:

Q. How did you get up with Michael Williams that particular day February 8, 1982? A. He came and picked me up from my house.

Q. On how many occasions did you call him prior to his coming to pick you up? A. Twice.

Q. What did you ask him to do? A. Take me to the bus station.

Q. Approximately what time did he come and pick you up? A. Sometime after 12:00.

Q. When you got in his car, who was with you? A. Me and another person.

Q. Who is the other person? A. James Riley.

Q. What if anything did you do when you got in Michael's car? A. I asked him to take me to the bus station.

Q. Did anything happen before you got to the bus station? A. No.

[36] Q. You didn't go to the Feeley Liquor Store? A. Yes, we did.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. How did that come about? A. We said we was going to get some beer.

Q. What happened? A. We asked Michael to stop to a liquor store.

Q. Did you tell him a particular liquor store? A. No, we did not.

Q. What happened when you were getting to the liquor store? Did you say anything about what you were going to do in the liquor store? A. Me and Riley discussed about we needed some money and we had to get some money and we discussed we was going to rob somebody.

Q. What did Michael say to that? A. He said he didn't want nothing to do with it.

Q. So did Michael know you were going to do a robbery of the liquor store before you went in the liquor store? A. He knew we was going to get some money. He knew we was going to do something wrong. He didn't know it was going to be a robbery.

Q. How did he know you were going to do something [37] wrong, if you know? A. Because we discussed it.

Q. What did he say? He didn't want any involvement? A. Yes, he did.

Q. Now, you drove by the Sandbar Liquors Store; is that correct? A. Yes.

Q. Who did the driving? A. Michael Williams.

Q. Did he park right in front of the Sandbar Liquors? A. No, he did not.

Q. Mr. Baxter, I would like you to step down from the witness stand. You are looking at a photograph that has been marked State's 6. If you could just move so the ladies and gentlemen of the jury can see this. This is the

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Sandbar Liquors [sic] Store (indicating). This is White Oak Road (indicating). This is the Seven-Eleven (indicating). You remember this particular scene? A. Yes.

Q. You went in that liquor store that day, didn't you? [38] A. Yes.

Q. And you were there when Mr. Feeley was shot and killed; is that right? A. Yes, I was.

Q. Where did Michael Williams park the vehicle? Let the ladies and gentlemen see where he parked the vehicle. A. Here (indicating).

Q. What I would like you to do is take a pen and mark with an X where he parked the vehicle. A. No, it was more or less here (indicating).

Mr. Liguori: Retake your seat, please.

By Mr. Liguori:

Q. After Michael parked the vehicle, what if anything did you do? A. We got out and went to the store.

Q. What did you do when you got in the store? A. Then the robbery took place.

Q. How much did you get from Mr. Feeley? A. Somewhere between a hundred and fifty, $160.

Q. Did you leave the cash register open? A. Yes, I did.

Mr. Liguori: Madam Prothonotary, could you [39] show him State's 1 through 4.

By Mr. Liguori:

Q. Does that basically look like the way you left the cash register? A. Yes.

Q. Mr. Feeley didn't want to give you that money, did he? A. No, he didn't.

Q. Someone held a gun on him, didn't they? A. Yes, they did.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. After you robbed the place, what did you do? A. Then we left and went back to the car.

Q. You walked back? A. Yes.

Q. You got in the car? A. Yes, we did.

Q. What if anything did you do next? A. Then we pulled away and started to the bus station.

Q. What if anything did Mr. Williams say to you? A. He asked us what happened.

Q. What did you say? A. We told him we robbed the man and Jimmy said [40] he shot him.

Q. What did Mr. Williams then say? A. He asked him why he had to shoot him and then we went on and told him what happened.

Q. Now, prior to going to the liquor store, you showed Mr. Williams the gun you had in the basement of your house, is that correct, that particular afternoon? A. No, I did not.

Q. That is not correct? A. No, it is not.

Q. So you didn't show him that gun? A. No.

Q. So when Mr. Williams testified under oath that you showed him that gun he is wrong? A. Yes, he apparently is. I don't remember showing the gun.

Q. Now, where did Mr. Williams let you and Mr. Riley off? A. State Road Bus Station.

Q. Mr. Williams subsequently met you in Baltimore, Maryland; is that correct? A. He didn't meet me there. I seen him there.

Q. You came in contact with each other? [41] A. Right.

Q. What if anything did you discuss there in Baltimore, Maryland? A. What did we discuss?

Q. About the incident. A. I asked him how was he doing. He said all right. He told me they was looking for

me and Riley in Delaware and they questioned him about taking me and Riley to the liquor store.

Q. What if anything did you say to him? A. I asked him what did he say and he went on and told me.

Q. What if anything did you say then? A. Well, I asked him did he tell him anything. He said no.

Q. Did he tell you why he said no? A. No, I can't recall that. I don't remember.

Q. Mr. Williams did not know that you were going to shoot Mr. Feeley; is that correct? A. He didn't know I was going to shoot him because I didn't shoot him. He didn't know anybody was going to shoot him.

Q. Mr. Williams knew your were going to do a [42] robbery though, didn't he? A. He knew we was going to get some money.

Q. In your vernacular, in the language you use, did you say you were going to do a hustle? A. Yeah.

Q. What does that mean? A. It means gets some money.

Q. And Mr. Williams then waited for you in a car; is that right? A. Yes, he did.

Mr. Liquori: No further questions.

CROSS-EXAMINATION

By Mr. Wolhar:

Q. Mr. Baxter, do you know Paulette Cannon? A. Yes, I do.

Q. Did you call her the day before you and Riley went over to the Sandbar Liquors Store? A. No, I did not.

Q. You didn't contact her by telephone? A. No, I did not. I don't even know her number.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. When you first contacted Michael on February 8, what did you say to him on the telephone? A. I asked him to take me to the bus station so [43] I could leave town.

Q. Did you tell him you were going to commit a robbery? A. No, I did not.

Q. Did he ask you to call back? A. Yes, he did.

Q. Did he tell you why he wanted you to call back? A. He said because he didn't think he could take us and he had to check on something. He was washing his car or something.

Q. He told you he was washing his car? A. Yeah.

Q. Did he also tell you he had to work that night at Perdue? A. Yes, he did.

Q. When you called him back, what was discussed? A. He said he'd take me.

Q. Were arrangements made for him to stop over to your house? A. Yes, it was.

Q. Who was there when Michael got to your house? A. Me, my mother and another lady and James Riley.

[44] Q. Did Michael know James Riley before he saw him at your house on February 8 of 1982? A. No, he didn't.

Q. You introduced Michael to James Riley; is that correct? A. Yes.

Q. Was there any discussion at your house about robbing any liquor store? A. No, there was not.

Q. So Michael agreed to take you and Riley to the bus station; is that correct? A. Yes.

Q. When you got in the car, when did you first bring up the language about a hustle? A. After we got to riding.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. I am sorry? A. After we were riding a little bit.

Q. Wasn't it true it was after you got close to the liquor store? A. I don't know.

Q. You don't remember where you first brought it up? A. We was on the way to State Road.

[45] Q. When the discussion came up about making the hustle, this was a discussion between you and Mr. Riley; is that correct? A. Yes, it was.

Q. You two agreed to make a robbery or a hustle; is that correct? A. Yes, it was.

Q. Did Michael ever agree to make a hustle or a robbery? A. No, he did not.

Q. Did you tell Michael you wanted to go to the liquor store to get some beer? A. Yes, we did.

Q. Did you ever display the weapon, the pistol in Michael's car before robbing the liquor store? A. No, we didn't.

Q. Did Michael know you had that weapon in the car? A. I am not sure.

Q. Who had the weapon? A. Riley did.

Q. Did he have it on a holster in plain view or was it concealed on his clothing? [46] A. No, he had it concealed.

Q. Do you remember Riley ever pulling the gun out in the car to let Michael know that he had a gun with him? A. No, he didn't.

Q. When you got to the liquor store, did Michael tell you why he wanted to go around the corner to where he parked? A. Well, he said he didn't want anything to do with the robbery.

Q. Did he tell you that he knew some girl that lived around there? A. Yes, he did.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. Did he tell you her name? A. No, I don't remember.

Q. Do you remember if it was Noreen? A. No.

Q. Did Michael tell you and Mr. Riley that he was going around to Noreen's so he wouldn't be involved in this hustle that you said you were going to do? A. At first I think he said something about that.

Q. Michael never went into the liquor store, did he? A. No, he didn't.

[47] Q. Michael never touched the weapon that was used? A. No, he didn't.

Q. With respect to the money that was obtained in the liquor store, did you split it three ways? A. No, we did not.

Q. Who kept the money from the liquor store? A. Me and Riley did.

Q. Did you give Michael money for gas like you told him you would? A. Yes, we did.

Q. Do you remember how much it was? A. I think it was $20.

Q. Did Michael ever ask you for his one-third share of the money that was taken from the store? A. No, he didn't.

Q. After you went into the Sandbar Liquors Store and Mr. Riley shot the owner, how did you leave the store? Were you running or walking or what? A. We were walking.

Q. Did you run back to Michael's vehicle? A. No, we didn't.

Q. Did you go back very calm? A. Yes, we did.

[48] Q. When you first got in the vehicle, you didn't tell Michael that you robbed that store, did you? A. Yes, we did.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. At what point did you tell him? A. When he asked us what happened.

Q. Where were you in the vehicle when that happened? A. In the front of the car.

Q. Pardon me? A. In the front of the car.

Q. But where was the car? A. It was parked where I pinpointed on the picture.

Q. At that time you told Michael that Mr. Riley shot the owner of the liquor store; is that correct? A. Yes.

Q. Did you tell Michael that one of you two had a gun? A. He seen we had the gun.

Q. When you got back in the car was the first time that he saw you two had a gun; is that correct? A. Yes.

Q. What did he say after you told him that the liquor store was robbed and that somebody was shot? [49] A. He asked Riley why he had to shoot him.

Q. What did Riley tell him? A. He said because the man kept bucking, he wouldn't give the money up.

Q. When you say bucking, what do you mean? A. Didn't want to give the money up.

Q. When that happened you and Michael and Riley were in Michael's car at that time; is that correct? A. Yes, we were.

Q. Do you remember the route that Michael took when he left where his vehicle was parked back at the projects to take you to the bus station? A. Yeah. We went out the back and came back out on Dual 13.

Q. Did you drive right up on the main road Route 13? A. Yes, we did.

Q. Right up to Wilmington? A. Yes, we did.

Q. You didn't take any back roads or side roads? A. No, we didn't.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. Was Michael when he was driving driving in a normal fashion observing the speed limit and the laws and [50] so forth? A. Yes, he was.

Q. He wasn't speeding like he was trying to evade the police? A. No.

Q. When did you give Michael the gas money? A. After we got up the highway aways, a little ways.

Q. How far up? A. Not even halfway.

Q. Did you see Michael after you were arrested and after he was arrested in prison? A. Yes, I did.

Q. Was there any type of discussion there about this incident? A. Yes, there was.

Q. Would you relate what that discussion was. A. It was just about, you know, what was going to happen when we go to court, you know.

Q. What was discussed? A. I can't remember word for word, but, you know, I told him there wasn't no reason for him to come spend time in jail for something that he didn't, you know, [51] actually do, he didn't actually take part in as far as robbing and the murder.

Q. Mr. Baxter, you have testified in the case with Mr. Riley and you told another jury what Mr. Riley's role was in this case; is that correct? A. Yes, I did.

Q. Did you tell the truth in that case? A. Yes, I did.

Q. Are you telling the truth in this case? A. Yes, I am.

Q. Do you have any reason to protect Michael? A. No, I don't.

Mr. Wolhar: No further questions, Your Honor.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

REDIRECT EXAMINATION

By Mr. Liguori:

Q. Mr. Baxter, didn't Mr. Williams when you were in jail with him, didn't he write a letter to have you sign? A. Yes, he did.

Q. Do you have that letter with you? A. No, I do not.

Q. But tell me about that letter. A. The letter stated that I was telling whoever [52] it was, you know, the letter was going to his lawyer, court, wherever, that he didn't actually take place in the robbery.

Q. He didn't actually take place in it. You wrote that letter in prison? A. No.

Q. I am sorry. Strike that. You received that letter in prison from Mr. Williams; is that correct? A. Yes.

Q. And you were asked to sign that? A. Yes.

Q. That he didn't take place in the murder? A. Yes.

Q. Is there any question in your mind that Michael Williams knew you were going in the liquor store to do something wrong? A. That he knew or that he didn't know?

Q. Let me put it to you this way. Did Michael Williams know you were going to do a hustle in the liquor store before he drove around the back? A. Yes, he did.

Mr. Liguori: No further questions.

[53] RECROSS EXAMINATION

By Mr. Wolhar:

Q. You say that he knew you were going to do it. How can you state what he thought to an absolute certainty? A. Well, if me and him was in the car and you

were driving and we was discussing going to get some money, wouldn't you say you knew?

Q. Do you know exactly what was going through Michael's mind when you said that you might make a hustle at the store? A. Did I know exactly what was going through his mind?

Q. Yes. A. I only know what he told me.

Q. You don't know whether or not Michael thought that you might not have been serious about it, do you? A. He knew we was serious.

Q. How did he know? He didn't see the gun, did he? A. No, he didn't, but we was seriously talking.

Q. What did you say that was seriously talking? A. We said we was going to get some money.

Q. When you said that, you didn't say you were [54] going to rob anyplace, did you? A. I don't recall saying that, but Riley told him we had to get some money. We had to take something.

Q. But you never told him that you had a gun with you when you left his car, did you? A. No, I didn't.

Q. You never told him that you had a gun in his car? A. No, I didn't.

Q. If you didn't have the gun, would you have tried to rob the store? A. I don't think so.

Mr. Wolhar: Thank you. No further questions.

REDIRECT EXAMINATION

By Mr. Liguori:

Q. Mr. Wolhar wouldn't let you finish. You only knew what the defendant told you when you said you was going to do a hustle. What did the defendant tell you? A. He said he didn't want nothing to do with it.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Mr. Liguori: No further questions.

Mr. Wolhar: I have no further questions, Your Honor.

The Court: You may step down.

* * *

[67] MICHAEL ANTHONY WILLIAMS

MICHAEL ANTHONY WILLIAMS, the defendant, called on his own part and behalf, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Wolhar:

Q. Michael, please speak up so the jury can hear your answers. Would you state your name, please. A. Michael Anthony Williams.

Q. Where do you currently live? A. 8 Draper Drive, Dover, Delaware.

Q. With whom do you live? A. My mother.

Q. How old are you at the current time? A. Twenty-three.

Q. What is your date of birth? A. August 6, 1959.

Q. Are you currently employed? A. Yes, I am.

Q. Where are you employed? A. Tilghman's Variety Store in Milford, Delaware.

Q. What do you do for them? A. I am a clerk.

[68] Q. Prior to working at Tilghman's where you currently work, where were you employed previously? A. Capital Foods in Baltimore, Maryland and before that Perdue in Felton, Delaware.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. Were you working for Perdue in February of 1982? A. Yes, sir.

Q. What were you doing for Perdue? A. Deboning.

Q. What does that consist of? A. That is packing and cutting legs and thighs.

Q. Prior to working for Perdue, where were you employed? A. I was in the army.

Q. In the United States Army? A. Yes, sir.

Q. How long did you serve in the army? A. Three years.

Q. Did you receive an honorable discharge? A. No, sir.

Q. Have you ever been convicted of a felony? A. No, sir.

Q. Do you know Tyrone Baxter? [69] A. Yes, sir.

Q. How long have you known Tyrone Baxter? A. For about a year.

Q. When you say for about a year, you are talking about a year before February of 1982? A. Yes, sir. I met him in the church. He was going to church when I first met him.

Q. Which church did you meet him? A. My mother's church, Poly [sic] Temple Church.

Q. Your mother's church? A. Yes, sir.

Q. What is your mother's position with the Poly [sic] Temple Church? A. She is the pastor.

Q. How many times have you seen Tyrone Baxter since you first met him up to February 8th of 1982? A. Twice. I've seen him once in the church and I took my little brother over there to see him one time.

Q. Prior to February 8th of 1982, did you know or ever meet James Riley? A. No, sir.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. On February 8, 1982, in the early morning or around noon, what were you doing that day? [70] A. I was washing my car.

Q. Did you receive a phone call? A. Yes, sir. Tyrone called me that morning. He asked me to take him to the bus station.

Q. When he first called you, did he tell you that he planned to commit a robbery? A. No, sir.

Q. What did you tell Tyrone when he first called you and asked you to take him to the bus station? A. I told him I couldn't take him because I was cleaning my car and I didn't have any gas.

Q. Do you recall what he said? A. He said that he would give me the gas money if I take him. So I told Tyrone to call me back after I finished my car and he did.

Q. How much later did he call you back on the second occasion? A. Approximately a half-an-hour.

Q. What was said that time? A. He asked me would I take him and I told him okay.

Q. At that time did Tyrone Baxter tell you he planned to commit a robbery? [71] A. No, sir.

Q. What happened after the second telephone conversation? A. I went to Tyrone's house. Someone answered the door and let me in. Tyrone's mother and another lady was in the kitchen. I stopped and I spoke to them and Tyrone told me to go down to the basement. He was cooking for him and Jimmy at the time.

Q. When you say Jimmy, you are talking about Jimmy Riley? A. James Riley.

Q. They were cooking and what happened then? A. Tyrone told me to go on down to the basement. So Jimmy was laying across the bed.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. Just take a couple of minutes and calm down, Michael. I know you are nervous. A. So me and Jimmy talked and Ty came down the basement with the food.

Q. When they came down to the basement with the food, what kind of food did he bring down? A. He had some hot dogs.

Q. When you were in the basement, did Tyrone Baxter show you any kind of weapon? [72] A. So he went to the back of the basement and he came back with a handgun and he showed me the handgun. He introduced me to Jimmy, I mean James Riley and told me that was his cousin from Philadelphia.

Q. Was that the first time you met Riley in your life? A. Yes, sir.

Q. After Tyrone Baxter showed you the handgun, what did Tyrone do with the handgun? A. He took it back, back in the back of the basement where he had got it from.

Q. Did you ever see that handgun at anytime again prior to the two gentlemen Riley and Baxter entering the store? A. No, sir.

Q. What happened after he took the gun back into the room? A. Okay. So Tyrone came back in and we went on and we ate and Tyrone's mother was rushing him to leave, you know, he had to leave town. So she told Ty it was time to go. It was time for him and Jimmy to get out.

So Ty told me to come on. So we all got ready to leave. They had a big suitcase they were both trying [73] to fit their clothes in.

So they finally got the clothes in the suitcase and we left. Tyrone told me that he had to go to State Road. At

the time I had just got out of the service and I know there is a State Street.

Q. You know there is a State Street where? A. Downtown Dover and I thought that is where they wanted to go when they first called me because I had to work that night.

Q. While you were in Tyrone Baxter's basement and Tyrone Baxter's house and even when he showed you the gun, did he ever tell you at that time or did James Riley ever tell you that they intended to commit a robbery or plan a robbery? A. No, sir.

Q. Did they tell you they were going to take the gun with them—A. No, sir.

Q. —in your car? A. No, sir. So we was getting ready to go down to the bus station and Ty asked me was the liquor store by the park open and that is where he, you know, everybody was going, you know, during the summertime. Everybody goes out [74] there and parks their cars and clean them and everything and I said yeah, because I go there all the time.

Q. Now, Tyrone asked you if there was a liquor store by the park meaning the Sandbar Liquors Store? A. Was that liquor store open.

Q. Was he the one that first mentioned that liquor store? A. Yes, sir. So I went on and I said, well, I got to go see if Noreen is going to work tonight because I was taking this young lady named Noreen to work and this other young lady named Toni to work and this dude named Doug to work. They was riding with me.

Q. Where does Noreen live? A. She lives, I think the name of the apartment is White Oaks.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. Let me show you the aerial photograph that is in evidence as State's Exhibit No. 6 in this case and if you could point out to the jury exactly where Noreen lives in relationship to this aerial photograph. A. Would this be the store—

Mr. Liguori: That is the liquor store.

The Witness: She would live up in here (indicating) somewhere.

[75] By Mr. Wolhar:

Q. Was it your custom to pick her up and take her to work—A. Yes, sir.

Q. —with you at Perdue? A. Yes, sir.

Q. Did she work at Perdue the same shift that you worked? A. Yes, sir.

Q. Do you know what she did for Perdue? A. She was working on the deboning line, too.

Q. Deboning? A. Uh-huh (Affirmative).

Q. Now, when Baxter and Riley got into your car, where did Mr. Baxter sit? A. Tyrone Baxter sat in the front and James Riley sat in the back.

Q. When did they first discuss with you or mention anything about a robbery or a hustle or anything of that nature in relationship to where you were going at the time? A. All right. They didn't mention it until we was about fifty yards from the store when they was talking between each other and I had the radio playing and, you know, [76] everybody was just talking and Ty told Jimmy that he, you know, needed some money. They was going to make a hustle.

Q. What did you say when they mentioned the word hustle? A. I didn't say anything.

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Q. You know there is a State Street where? A. Downtown Dover and I thought that is where they wanted to go when they first called me because I had to work that night.

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Q. What did you say when they mentioned the word hustle? A. I didn't say anything.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. Did you agree with Tyrone Baxter and James Riley to commit the hustle? A. No, sir.

Q. Did you make any statements to them about your not wanting to get involved with that? A. I said look—I said, you know, don't put—whatever you all do, I don't want to have anything to do with this. So they just dropped the conversation because they was, you know, trying to talk amongst each other and I told them I didn't want to hear it.

Q. When they mentioned the word hustle, did either one of them indicate they had a gun on them—A. No, sir.

Q. —at the time? A. No, sir.

Q. When they mentioned they were going to commit a hustle, did you know for sure whether or not they were going to commit a hustle? [77] A. No, sir.

Q. Did you think they were going to commit a hustle? A. No, sir.

Q. Why not? A. Well, it was in the daytime. It was broad daylight.

Q. About what time was it? A. About 12:00, 12:30, I guess. Where the liquor store is at it is by a busy intersection. It is a police department not too far from there.

Q. Which police department? A. I don't know the name of the police department and I didn't know they even had a gun. You know, I didn't pay it any mind.

Q. When you went over to Noreen's, Mr. Baxter and Mr. Riley got out of your vehicle; is that correct? A. Yes. They got out of the car when I went to Noreen's house. They told me they was going to get something to drink. You know, they never emphasized they were going to do that. They said, Mike, I am going around the corner and get something to drink.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

They got out of the car and I went on to [78] Noreen's house. I knocked on the door for awhile. I waited. There was nobody there. There was a mailman across the street. I waited for awhile. It was hot. I knocked again. Didn't nobody come.

I went on, got back in the car. I was waiting for Ty and them to come back. So they came on back and they got in the car. They was walking.

Q. When they came back, were they running? A. No, sir.

Q. Did they appear to be nervous or were they calm? A. They were calm.

Q. Did they get back into your car? A. Yes, sir.

Q. Did they have any kind of alcoholic beverages with them? A. No, sir.

Q. When they got in the car, what did they say to you? A. They didn't say nothing at first. They got in the car. I asked them where is the thing. Didn't nobody say nothing. I was smelling liquor and I said what'd you all do, what happened? And Jimmy—Ty and [79] Jimmy told me they went in the store and did what they did.

Q. Tell the jury exactly what they told you they did. A. Okay. Ty told me, said, Mike, we went in the store and Jimmy shot this man because the man hit him with a bottle, hit him with this bottle.

Q. Did they show you the gun at that time? A. Yes, sir.

Q. At the time they said that to you and at the time they showed you the gun, were they already in your car? A. Yes, sir.

Q. Where was Mr. Riley seated? A. He was sitting in the back and Tyrone Baxter was sitting in the front.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. Is Riley the one that had the gun? A. Yes, sir.

Q. When you left the area, where did you plan to go at that time? A. I was still taking them downtown because they told me they wanted to go to State Road and I know there is a State Street downtown and I was taking them on down there because I am originally from Baltimore and I don't [80] know nothing about Delaware. It is the first time I had ever been up here and I was taking them on downtown when Ty said, no, you got to take us to State Road, and I kept saying you're talking about State Road. I said I'm going. He said State Road and that is when I found out where it was at and he said you have to take us there.

Q. When you were taking them to State Road, did you take the main road— A. Yes, sir.

Q. Right up? A. Yes, sir.

Q. Were you speeding? A. No, sir.

Q. Were you running red lights or running stop signs? A. No, sir.

Q. How were you driving? A. Normal.

Q. Did you ever take any side roads or back roads to get up to State Road? A. No, sir.

Q. You just followed the main road? A. Yes, sir.

[81] Q. Did you drive right past the police station that was on the way? A. Yes, sir.

Q. What happened when you got to State Road at the bus stop? A. Ty and Jimmy got out of the car and they went down into some bushes and I seen Jimmy trying to get ready to get undressed and I went and pulled off. I just went on and left them.

Q. Did they say anything to you after you left the Dover area and before you got to State Road about what

would happen if you made any statements about what they told you? A. Well, Ty and them said, you know, if something happened to us you're going to be in it, too, because I didn't do nothing and I guess he thought if they would get caught I would go and tell. He said, listen, if you tell something, you know, we're going to put you in it. So I just didn't never say nothing and I never seen Jimmy before and he had a gun in there, just told me he had shot somebody.

Q. What difference would that make? A. Like I say, I didn't know what kind of person [82] he was. He could have done something to me, put me out of my own car.

Q. Were you fearful of him? A. Yes, sir.

Q. Did you ever ask James and Tyrone to split the money from the liquor store with you? A. No, sir.

Q. Did they in fact give you any type of money? A. They gave me gas money.

Q. Other than the gas money, did you receive any other money? A. No, sir.

Q. Did you later discuss the fact that you were with Baxter and Riley with your mother? A. Yes, sir.

Q. What happened after you discussed that with her? A. I told her and she said that, you know, we should get a lawyer and we got Mr. Wolhar and that is when we went in to see Mr. Liguori.

Q. Did you go into Mr. Liguori's office before Mr. Liguori even knew you were involved in this matter? A. Yes, sir.

[83] Q. Why did you go in there? A. I was just tired. My face started breaking out from worrying, you know.

Q. Did you attempt to cooperate with Mr. Liguori in solving the murder? A. Yes, but I didn't never really tell

him the whole truth because, like I say, I was—I seen Ty in Baltimore and he told me again, he said,—

Q. Let me ask you this, Michael. When you went to Mr. Liguori's office, did you tell Mr. Liguori that you were in the car and that Tyrone and James went into the liquor store? A. Yes, sir.

Q. And that Tyrone and James told you that James shot the man? A. Excuse me?

Q. Did you tell Mr. Liguori what Tyrone and James Riley told you about what they said happened in the store? A. Yes, sir.

Q. And this was before Mr. Liguori even knew who you were; is that correct? A. Yes, sir.

Q. Now, when you were in Mr. Liguori's office, [84] you did tell him lies; is that correct? A. Yes, sir.

Q. And later Mr. Liguori asked you to testify in the case against Mr. Riley; is that correct? A. Yes, sir.

Q. Were you told to tell the truth in that case? A. Yes, sir.

Q. And you were under oath in that case? A. Yes, sir.

Q. Were you under oath in Mr. Liguori's office? Do you know what I mean by under oath? Did you swear on the Bible? A. That is what I was telling him—no, I don't think so.

Q. In the Superior Court case, you did testify under oath; is that correct? A. Yes, sir, and I told Mr. Liguori that I would tell the truth.

Q. Did you in fact tell the truth in the Superior Court? A. Yes, sir.

Q. Are you telling the truth here today to this jury? [85] A. Yes, sir.

Q. When you testified in the case against Mr. Riley you testified for the State; is that correct? A. Yes, sir.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. When you went to Mr. Liguori's office and discussed this matter with him, why did you lie to him? A. Tyrone had already—he said, man,—excuse my language,—he just said man, Jimmy is kind of off, you know. He says, you know, don't say nothing about this because you will be in it, too, and I am not sure about Jimmy. And when we got locked up we was all up to Smyrna together and Tyrone came at me with a razor blade and Jimmy tried to—

Q. Just relax for a minute, Michael, so the jury can hear what you are saying. Take another drink of water. A. All right. But Tyrone was telling Jimmy that he told on us and Tyrone—I sa[illegible], I didn't tell on you all. So Tyrone—

Q. Tyrone what did he do? A. He grabbed the razor and Jimmy was like on a bunk and he jumped off the bunk and I ran down the hall and told the guard and I told my mother the next day and they moved me down to Georgetown.

[86] Q. Tyrone Baxter, the gentleman who testified here yesterday, was the one who while you were in prison awaiting there came at you with a razor; is that correct? A. Yes, sir.

Q. At the time that you went to Mr. Liguori's office, do you know whether or not both Mr. Baxter and Mr. Riley were still free at large? A. Yes, sir.

Q. They were still at large and not picked up by the police yet; is that correct? A. No, sir.

Mr. Wolhar: I have no further questions, Your Honor.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

CROSS-EXAMINATION

By Mr. Liguori:

Q. Michael, you and I talked on a number of occasions, right? A. Yes, sir.

Q. And we have talked with your mom and with your Uncle Jim on a number of occasions, right? A. Yes, sir.

Q. And at all times we told each other we would be as honest as we could with each other and we would try [87] as best as we could to help out each other, right? A. Yes.

Q. You were distraught over the death of Mr. Feeley right? A. Yes, sir.

Q. And you wanted to help in the prosecution of the individuals who killed James Feeley, right? A. Yes, sir.

Q. Now, let's take this chronologically so the ladies and gentlemen of the jury know what happened. You spoke with your mother when about your involvement? A. I'm not sure. About two months.

Q. The robbery occurred February 8, 1982, correct? A. Yes, sir.

Q. What did you do February 9, 1982, the day after the robbery? A. I went to work.

Q. Where did you go to work? A. Perdue.

Q. How long did you work there? A. For about a year.

Q. When did you talk with your mother about what happened? [88] A. It was about two months later.

Q. We are going to say April 8th. A. Okay. It was about a month or two later.

Q. Could it have been the latter part of April, 1982? A. I am not sure.

Q. Let me ask you this. Is your name or have you had a name by the name of Moody? Was that your name? A. My name? No, sir.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. Is your mother's name Moody? A. Yes, sir. She got married recently.

Q. So it used to be Moody or it is now Moody. A. My mother's name is Julia Moody.

Q. Now it is Moody? A. Yes, sir.

Q. When did you and your mother talk about getting a lawyer? A. The same day we talked.

Q. About the whole thing? A. Yes, sir.

Q. Could it have been the latter part of April of 1982, specifically around the 27th of April? A. I don't know.

[89] Q. Do you know that your mother was interviewed by the police with regard to your involvement in this homicide? A. My mother?

Q. On April 27, 1982? A. She just came to me and she said do you know anything about this thing that had happened and at first I was, I was kind of scared to tell her but deep inside I was more than happy because I had been going through something the other two months before this even happened. Like I say, my face has been broke out. I was afraid of losing my job.

Q. Relax. We just want to get all the information here. Now, do I understand, Michael, correctly in that after your mother came to you you then were more than happy to discuss with her what had happened? A. I wanted to tell my mother all the time, but she's a minister and all our life has been brought up in church. You know, I just couldn't find a way to go and tell her it happened. When she came and told me, I was more than happy to tell her what had happened.

Q. So when your mother came to you, you then told her what had happened? [90] A. Yes, sir.

Q. And in your mother's good sense she said let's get a lawyer, right? A. Yes, sir.

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Q. And then as time evolved approximately, I think it is, May 8th you come to my office, right? A. Yes, sir.

Q. Now, you are in my office with your mother and your Uncle Jim and Mr. Wolhar, right? A. Uh-huh (affirmative).

Q. And we begin to talk and we say, look, Michael, we have arrest warrants for you. Didn't we tell you that? We have arrest warrants for you? A. Uh-huh (affirmative).

Q. So we already had a warrant for your arrest, right? You knew that before you talked to us? A. No. I didn't know that you all had warrants for my arrest.

Q. But before you talked to us, you knew Detective Sigler had arrest warrants for you? A. No.

Q. Now, you then decided to tell us something. A. Yes, sir.

[91] Q. To cooperate with us? A. Yes, sir.

Q. But you keep in mind the fact that, number one, you were accosted by Tyrone Baxter and James Riley in the prison and, number two, that Tyrone Baxter told you that man Jimmy is a little off. You have to be careful. So you were concerned about telling us the truth, right? A. I was concerned about what would happen to me, you know, some things I heard about Jimmy.

Q. You were concerned about and for lack of a better term I will say squealing on Tyrone and Jimmy. A. I was concerned about my life. I was scared something would happen to me. Like when we was out on the street, Jimmy had the gun and that is what I was worried about. I wasn't worried about saying something on them. I was more than happy to testify, say something about them.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. Michael, would you agree with me that you were concerned about what Tyrone or Jimmy or members of their family might do to you or themselves might do to you if they found out you were talking to us? A. Yes, sir.

[92] Q. So that is what you were concerned about were Jimmy and Tyrone, correct, them or members of their family? They might shoot you, hurt you, break into your car or something? A. Mr. Liguori, I was concerned about my life.

Q. As a result of what though? Fear from those guys? A. Yes, sir.

Q. So you are fearful of the two guys that went into the liquor store: Jimmy and Tyrone? A. Yes, sir.

Q. However you tell us what Jimmy and Tyrone did, didn't you, in that statement? A. What they did? Yes, sir.

Q. There is one thing you didn't tell us in that statement. What didn't you tell us in that statement—strike that. What did you lie to me about in that statement? A. I told Mr. Liguori that Ty and Jimmy went in the store and they came back with something to drink, but what really happened they didn't come back with nothing to drink and he did rob the store, but I did tell them I did take them to the store and they did go to the store.

[93] Q. Michael, would you agree with me that you did not tell us about your involvement in the robbery; specifically, Michael, did you lie to me about where you parked the car? A. I told Mr. Liguori that I was parked on the parking lot.

Q. What parking lot? A. On the Sandbar Liquor Store parking lot.

Q. You told me, did you not, that you pulled into the parking lot of the Sandbar Liquors, didn't you? A. Yes, sir.

Q. So that was a lie? A. Yes, sir.

Q. Now, you lied to me about where you parked? A. Yes, sir.

Q. That has nothing to do with Jimmy or Tyrone taking reprisal from you, right? Would you agree? A. Excuse me?

Q. What you lied to me about was your involvement, not about your codefendants, right? A. I didn't tell you that—May 8th when I went to your office, I didn't tell you they had robbed the store.

[94] Q. Let me ask you this. Let's just follow this. Do you agree with me that when you talked to me on May 8th you told us about Tyrone and Jimmy, your picking them up and their going to the Sandbar Liquors Store? A. Right.

Q. You didn't tell us about your involvement. You didn't tell us you drove around and parked behind the buildings? A. I didn't park behind the buildings.

Q. You point out to the ladies and gentlemen of the jury where you parked. A. The store is right here (indicating) and Noreen she lives up in these apartments right here (indicating). I was parked right in front of her door.

Q. In front of her door here (indicating)? A. Yes, sir.

Q. There is one, two, three apartments, correct? A. Two or three. I know she lives in one of those apartments.

Q. Now, you didn't tell us that though, did you, that you parked there? A. No, sir.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Q. You said you pulled up right in front? [95] A. Yes, sir.

Q. That was your involvement. You pulled up right to the front of the liquor store? A. That is what I said, yes, sir.

Q. But what you did when you told us what happened you removed yourself from behind the store in the apartments to the front of the store, correct? You told us you pulled up in front, didn't you? A. Right.

Q. You have also told the ladies and gentlemen of the jury that you thought they were kidding. You didn't know what they were going to do, correct? A. I didn't have no idea what they was going to do, no, sir. They just told me they was going to get something to drink. When they got out of the car, that is what they said. They said, Michael, we're going to the store to get something to drink.

Q. Now, if they were going to get something to drink, why did you pull right up in front? A. I was over to Noreen's. I was going to Noreen's house to ask Noreen what time she was going to be ready because Perdue—one night you might work 5:30 and the next night it might be 6:30 before you start and [96] it was a tendency of me in the daytime to go around to their houses and tell them what time I was going to come by to pick them up.

Q. Are you telling the ladies and gentlemen of the jury that it was convenient for you to pick out the liquor store? A. Go ahead and take care of Noreen while they go to the store at the same time. It was right there together.

Q. Now, what time did you go to work that night? A. About 6:00, 6:30.

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Q. Now, you are waiting for Jimmy and Tyrone; is that right? A. No, sir. I knocked on the door. I waited. Like I say, there was a mailman across the street. I was right there. I knocked on the door again, didn't nobody come.

I got back in the car. I was in the car. I could have started the car up and they was there. It was that fast. I got in the car. As soon as I got in the car, like I say, I might have grabbed something from underneath the seat and they come walking up to the car.

Q. When did they tell you they were going to do a [97] hustle? A. They was telling each other. They was talking to each other. I had the radio playing. Everybody was just talking and they said—Ty said, man, we need to make a hustle and I just said, look, because they are getting ready to get whatever they are going to talk about. I said, look, don't talk like that in my car.

Q. Well, you said they were kidding around. You didn't know if they were serious, right? A. No, sir.

Q. You didn't know they had a gun? A. No, sir.

Q. Although you did see a gun at the house of Tyrone Baxter? A. Yes, sir.

Q. Under what circumstances was that gun brought out to you? A. Why did they show me the gun in the house?

Q. Yes. A. They just showed it to me.

Q. Did he say, boy, I'd like some mustard on my hot dog and all of a sudden he showed you the gun? What was the conversation surrounding that? [98] A. We was just talking. Ty said something and went in the back.

Q. What is the something Ty said? A. He probably said something like wait a minute, Mike. I want to show

you something. Anything. We wasn't talking on the conversation to rob something like that. I didn't even know there was a shoe box. I never even knew what was in there. He just said, here, man, and I looked and I seen the gun and gave it right on back to him.

Q. You picked up the gun? A. I never touched it. He had it in the shoe box. I seen it and he went on.

Q. What did you say about the gun there? A. In the house? Nothing.

Q. Just handed it back to him? A. You know—you know, I didn't pay the gun no mind. They wasn't emphasizing on it or nothing. We was just talking and he showed it to me and he went on and took it back.

Q. You didn't say, gee, it looks nice or it's a gun, nothing like that? A. I didn't say nothing.

[99] Q. Now, you are in the car and you are on your way to the liquor store by the park? A. Yes, sir.

Q. Because I think it is Tyrone who asks you is the liquor store by the park open and you said yeah, it should be open, something to that effect? A. Yes, sir.

Q. But you at that time didn't know anything about a robbery? A. No, sir.

Q. You are getting close to the liquor store and they use the word we are going to do a hustle, correct? A. Mr. Liguori, it wasn't like they was sitting in the car and they said we're going to do a hustle. They was talking to each other and, you know, I heard them say, you know, man, we need to make a hustle and like I told them they was talking to each other. I said, look, man, I don't want you all talking like that in my car.

Q. Who was talking about the hustle? A. Tyrone and Jimmy.

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Q. They weren't talking to you? A. No, sir.

Mr. Liguori: Madam Prothonotary, could you [100] hand him State's 5 which I believe is the transcript—State's 7.

By Mr. Liguori:

Q. Michael, turn to page 317 on State's 7. You have testified that Jimmy and Tyrone were talking about doing a hustle; right? A. Un-huh (affirmative).

Q. Do you have 317 yet? A. Yes, sir.

Q. I am going to play Mr. Young. "Mr. Young: I am sorry. I didn't hear you." You start talking about what you said. A. "We was about fifty yards from the store then Tyrone told me he wanted to make a hustle."

Q. Is that different from what you are telling us here today? A. It wasn't like—they was talking to each other. Then nobody never—they never even put me in this thing.

Q. You want to explain yourself? Is that what I understand? You want to explain when your testimony was under oath on the "Tyrone told me he wanted to make a hustle"? That is not correct? You can explain it to these [101] people. They want to hear that. You want to change that? A. No. I won't change it because he said it in the car. He was talking to Tyrone—to Jimmy.

Q. Did he say to you, Michael—A. He was talking to Jimmy. He didn't say it to me.

Q. Why did you say he said it? A. I am right there.

Q. Why did you say he said it to you? A. Because I was right there and, you know, like I say, he was just talking. I mean, I am listening. Jimmy is listening. Like I told him, as soon as I heard it I said don't talk like that in my car.

Q. They use this term hustle. A. Yes, sir.

Q. And you know that term means get some money, right? A. Yes, sir.

Q. Now, you didn't know if they were kidding or not—strike that. You thought they were kidding, right? A. I didn't know what they meant by it. I didn't want them talking like that in my car.

Q. What is the next thing you say to them? [102] A. I told him, I said don't talk like that in my car. I said whatever you all are talking about doing, don't put me in it. Don't get my car and stuff involved in it because that is like Tyrone was saying yesterday I said listen, man, I have a baby on the way. I had another one. I was getting married soon. I had a job. I just came out of the army. I'm not into that. I never was into it. Don't get around me talking like that.

Q. If I understand correctly, chronologically Tyrone is talking and he says he is going to do a hustle. You then say whatever you do, whatever you all do I don't want to have nothing to do with it, you know, right? That is what you say? A. Okay.

Q. True or false? A. True.

Q. Page 317: "I got a baby on the way. I was working. So I was taking this girl Noreen to work at the time." A. Yes, sir.

Q. Now, you then, no matter what you might have thought they were kidding, but you wanted to use Noreen as an alibi, didn't you? [103] A. No, sir.

Mr. Liguori: Excuse me one second, Your Honor.

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By Mr. Liguori:

Q. Turn to page 319. Are you there? A. Uh-huh (affirmative).

Q. The second paragraph starts: "So. . ." That is you talking, right? A. Right.

Q. Tell the ladies and gentlemen of the jury what that says under oath. Go ahead. That is you speaking. A. "So I get out of the car to go, you know, over to Noreen's house, you know, just in case something ever happened. . ."

Q. Just what? A. "Just in case something ever happened."

Q. "Just in case something ever happened"? A. Right.

Q. You didn't go over to knock and say, Noreen, listen, I will pick you up about quarter of six, did you? A. I did have to take Noreen to work.

Q. You went over there just in case something was going to happen in a liquor store, didn't you, Michael? A. No, sir. I went over there because Noreen [104] had to go to work that night.

Q. Here is what I want you to do. Are you finished explaining that? Read to the ladies and gentlemen of the jury the rest of that paragraph. Start from the beginning again. A. "So I get out of the car to go, you know, over to Noreen's house, you know, just in case something ever happened I wouldn't be involved in this because I was telling them all the time I didn't want to have anything to do with it and Ty was telling Jimmy and me they are not going to put me in it."

Q. What is this? What do you mean Ty and Jimmy are telling you they are not going to put you in it? A. Jimmy never said nothing. Jimmy never said nothing.

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Q. So that is wrong then? You want to take that back about Ty was telling Jimmy and me they are not going to put me in it? A. Right, because Jimmy never said anything.

Q. When is Tyrone telling you that he is not going to put you in it? A. He said when we—over to the store he said, man,—he said, man, I am, you know, in this. He said, [105] you know, don't worry. I said, man, I don't want to hear that in my car. We was just talking.

Q. So in your car at or near the store Tyrone says to you after the hustle conversation about the hustle? A. That is all—this is going on together.

Q. Good. Okay. As it is all going on, we are going to do a hustle. You think that means they need some money. Hey, man, don't get me involved in this. Don't get my car involved. Don't get me involved. Honorable discharge from army, got a baby on the way, working hard and Tyrone says we are not going to put you in it, right? Am I right or wrong? A. Right.

Q. Then you say not a bad idea. Maybe I'll stop around to see Noreen just in case what, Michael? A. That didn't happen.

Q. Tell the ladies and gentlemen of the jury why you told another jury about three months ago that. "So I get out of the car to go, you know, over to Noreen's house, you know, just in case of something ever happened I wouldn't be involved." Just in case what ever happened? A. Whatever they was going to do.

[106] Q. You knew they were going to do something, didn't you? A. They said they had to make a hustle.

Q. You knew they were going to do something wrong, didn't you. A. I just knew they was going to do something. It didn't have to be wrong. You can sell something, anything.

Q. What did they take with them? Did they take a color television set or something in the store with them? A. No, sir.

Q. So you knew they were going to do something to get money? A. Yes, sir.

Q. You knew that before you pulled up in front—strike that. You knew that before you had an opportunity to pull up in front of the liquor store, right? A. Before I had an opportunity to pull up in the liquor store? Yes, sir.

Q. But you decided to drive past the liquor store left down this road (indicating) and a right into Noreen's apartment? A. Because I had told Ty all the time—I said, [107] I'm going to go ahead and go to Noreen's house.

Q. Just in case? A. No, sir.

Q. No? So that is wrong. Your testimony is wrong? A. I told Tyrone I was going to Noreen's house because I had to pick her up for work that night.

Q. Did you in fact talk to Noreen? A. No, sir.

Mr. Liguori: Excuse me one second, Your Honor.

By Mr. Liguori:

Q. Were you aware on May 8th, were you aware before that date of the arrest of Tyrone Baxter? A. Was I aware of anyone looking for Tyrone Baxter?

Q. Yes. A. His mother called me. I think she might have said something about Tyrone.

Q. She knew you came over? A. Yes, sir.

Q. And she knew you picked up he and Jimmy, Tyrone and Jimmy? A. Yes, sir.

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Q. When did Mrs. Baxter talk to you about that? [108] A. I think it might have been a few days later or two days later.

Q. After what? A. After the incident happened.

Q. What did you say to her? A. I said that Tyrone and Jimmy didn't do it.

Q. You lied to her, didn't you? A. Yes, sir.

Q. Now, under what circumstances did you meet Tyrone and Jimmy in Baltimore? A. Tyrone knew my brother and them, like I say, and he would come down to my sister's house sometimes to visit my brother.

Q. So you were over, if I understand, you were over visiting family? A. Yes. Yes, I was still living here.

Q. You were what? A. I was still working at Perdue.

Q. And it wasn't until your mother approached you with do you know anything about the Sandbar Liquors homicide that you decided to bare your soul to her? A. Yes, sir. Mr. Liguori, I was so happy to tell my mother what had happened. I had got tired. It's hard [109] running around here thinking about things like that and, you know, it's hard thinking especially when you ain't into that kind of life. If you are into that kind of life I guess you accept it, you know.

Q. This preyed on your mind? This bothered you, didn't it, the knowledge of what occurred? A. Yes, sir.

Q. However, you waited until your mother approached you before you decided to cleanse your soul, so to speak. A. Yes, sir.

Q. Then you had another opportunity to wipe the slate clean with the State of Delaware, didn't you? A. Uh-huh (affirmative).

Q. You wouldn't be here today if you didn't lie to us, right, Michael? A. You told me you would drop the

murder charge and I was charged with robbery, but, Mr. Liguori, I mean this when I say I wasn't lying to you to be lying, trying to help them boys.

Q. I am sorry. You weren't lying to help those boys? A. I wasn't telling you those things that day in your office to try to get them out of anything.

[110] Q. I agree with you, Michael. You were lying to protect yourself, weren't you? A. Because I was afraid.

Q. Answer my question. Were you lying to protect yourself? A. Depending on what you're talking about, Mr Liguori. I can't answer that like that. If you are talking about from you, I would have told you the truth. I was lying because I had already been told, Tyrone had already told me and a friend of mine was there, heard Tyrone threaten me out on the block. Ty and Jimmy wasn't locked up during that time and, like I say, when I got locked up the only reason I didn't get hurt is because I made it out of the room fast enough.

Q. My question is simply this. When you came to my office, you lied to protect yourself, is that correct, Michael? Correct? A. From Ty and Jimmy, yes, sir.

Mr. Liguori: No further questions.

REDIRECT EXAMINATION

By Mr. Wolhar:

Q. Michael, Mr. Liguori asked you a question about the arrest warrants being outstanding against you [111] before May 8th of 1982. May 8th was the day you met with Mr. Liguori; is that correct? A. Yes, sir.

Q. I show you the arrest warrants. What is the date on the bottom of those arrest warrants? A. May 8, 1982.

Appendix F—Excerpts of Transcript of Trial Dated April 25 and 26, 1983.

Mr. Wolhar: Your Honor, I would like to move these into evidence.

Mr. Liguori: No objection.

The Court: Mark them. That would be actual exhibits.

The Deputy Prothonotary: Defendant's 1 and 2.

(Arrest warrants marked, "Defendant's Exhibit Nos. 1 and 2" and received in evidence without objection.)

By Mr. Wolhar:

Q. Do you recall if we attempted to set up earlier meetings with Mr. Liguori before May 8th and we had difficulty in doing so? A. I believe so.

Q. At the time of the meeting on May 8th that was the only time when that warrant was prepared; is that correct? A. Yes, sir.

[112] Q. There was no outstanding warrant from you prior to going to Mr. Liguori's office, was there? A. No, sir.

Q. Michael, at anytime on February 8, 1982, did you intend to promote or facilitate the commission of that robbery? A. No, sir.

Mr. Wolhar: I have no further questions, Your Honor.

RECROSS EXAMINATION

By Mr. Liguori:

Q. Tell me what promote and facilitate means to you. A. I know promote means to—let's say if you are going to promote a fight, okay. Facilitate means if you like take part or that you want to take part.

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Q. Add to it, do something like that. Tell us why you are not involved in this. A. Why I am not involved?

Q. Why you are not involved. Why you are not guilty. A. Mr. Liguori, I didn't have no idea they was going to go in that store and shoot noboby, take no money. [113] They called me and asked me to do them a favor. Out of that favor I am sitting here right now. I didn't do anything. I didn't know this thing was going to even happen.

Q. Is it fair to characterize your involvement as Mr. Wolhar said yesterday to these ladies and geltlemen that you were in over your head, in something over your head? A. When I knew what had happened, I knew then that I was in something.

Mr. Liguori: No further questions.

Mr. Wolhar: I have no further questions, Your Honor.

The Court: You may step down.

(The witness stepped down.)

Mr. Wolhar: Defense rests.

Mr. Liguori: Rebuttal witness Detective John Sigler.

JOHN CHARLES SIGLER

JOHN CHARLES SIGLER, being recalled as a witness on the part and behalf of the State, on rebuttal, having been previously duly sworn, testified as follows:

* * *

APPENDIX G

Excerpts of Transcript of Trial
Dated December 6, 1982

IN THE
SUPERIOR COURT OF THE STATE OF DELAWARE

In and for Kent County

THE STATE OF DELAWARE,

vs.

JAMES WILLIAM RILEY,

Defendant.

Criminal Action Nos.
IK 82-05-0058, IK 82-05-0059, IK 82-05-0060,
IK 82-05-0061, IK 82-06-0838.

Trial beginning: December 6, 1982

Before:
HON. WILLIAM G. BUSH, III, *J.*, and a jury.

Appearances:
James E. Liguori, Esq., and
Mark A. McNulty, Esq.
Deputy Attorneys General
on behalf of the State of Delaware.

Young & Schwartz
By: Robert B. Young, Esq.,
on behalf of the Defendant.

Appendix G—Excerpts of Transcript of Trial Dated December 6, 1982.

EXCERPT OF TRIAL RECORD
TESTIMONY OF MICHAEL ANTHONY WILLIAMS

[a] *INDEX TO TESTIMONY*

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[309] * * *

The Court: Would you advise her to be on a standby call?

Mr. Liguori: Yes, Your Honor.

(The witness stepped down.)

Mr. Liguori: Michael Williams.

MICHAEL ANTHONY WILLIAMS

MICHAEL ANTHONY WILLIAMS, called as a witness on the part and behalf of the State, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Liguori:

Q. Mr. Williams, I want you to speak up so everyone can hear you. Mr. Williams, how old are you? A. Twenty-three.

Q. This morning you were charged as a codefendant of James Riley and Tyrone Baxter with the murder and the robbery of the Feeley Liquor Store; is that correct? A. Yes, sir.

Q. You now stand charged with robbery in the first degree and conspiracy in the second degree; is that correct? A. Yes, sir.

Q. The State dropped the two murder charges and the weapon's charge against you; is that correct? [310] A. Yes, sir.

Q. And you waived your Fifth Amendment right and you will testify truthfully this morning; is that correct? A. Yes, sir.

Q. Do you know James Riley? A. Yes, sir.

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Q. Could you point him out to the ladies and gentlemen of the jury. A. Sitting right there (indicating).

Q. The black man seated next to Mr. Young? A. Yes, sir.

Mr. Liguori: Let the record reflect it is the defendant.

By Mr. Liguori:

Q. Mr. Williams, I want to take you to February 8, 1982. You remember that particular day? A. Yes, sir.

Q. Did you have occasion to come in contact with Mr. Riley that day? A. Yes, sir.

Q. Did you have occasion to come in contact with Tyrone Baxter that day? A. Yes, sir.

[311] Q. Explain to the ladies and gentlemen of the jury how you got in touch with those people. A. Tyrone Baxter called me, called me twice.

Q. When was the first time Tyrone Baxter called you? A. It was early, early in the morning. He called me to ask me to take him to the bus station.

Q. What if anything did you say?

Mr. Young: Excuse me, Your Honor. If it please the Court. He may be too close to the mike.

The Witness: I told Tyrone that I couldn't take him because I was cleaning my car and I didn't have any gas.

By Mr. Liguori:

Q. What if anything happened after that? A. I told Tyrone I couldn't take him because I didn't have any gas and, you know, and I was cleaning my car. I said if you call me back later—he told me he would give me gas money to take him to the bus station. So I told him if he

called me back later, you know, after I finished my car I probably would take him.

Q. What happened? Did he call you back? A. Yes, he called me back about half-an-hour later.

[312] Q. What if anything did he ask you? A. He asked me to take him to the bus station. So I said all right. I went to pick him up, Tyrone. Somebody else at Tyrone's house answered the door when I got to Tyrone's house.

Q. Slow down a little bit. Where did you go to pick Tyrone up at? A. Capitol Green where Tyrone lived at.

Q. Had you been there prior to that occasion? Had you been there before? A. I had been there once.

Q. What happened when you arrived at the residence of Tyrone Baxter? A. All right. I talked to Tyrone's mother and there was a lady at the kitchen table. I talked to them for awhile. Tyrone was cooking. He was cooking some hot dogs I guess for him and Jimmy and he told me to go down to the basement. I went down the basement and Jimmy was laying across the bed.

Mr. Young: I am sorry.

The Court: Repeat that, please.

The Witness: So Tyrone told me to go down to the basement and Jimmy was laying across the bed. There [313] was a chair so I sit on the chair. Tyrone came down to the basement, you know.

Well, first he came down to the basement and we talked. Then he went back upstairs and he got the food. He came back down the basement. I ate a hot dog. Jimmy had some and Tyrone had some.

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By Mr. Liguori:

Q. Mr. Williams, when you say Jimmy who do you mean. A. James Riley.

Q. The defendant? A. Yes, sir.

Q. Okay. Proceed. A. So we was talking. Tyrone went like in the back of the basement and he came back. He had a gun. He showed me the gun.

Q. What kind of gun was it? Was it a rifle or a pistol? A. It was a pistol. So, you know, we just talked and everything and, you know. So it was time to leave. They had a big suitcase. Ty and Jimmy was packing their clothes in the same suitcase. They told me they had just came from Philly, they are trying to get to Baltimore and they asked me to take them to the bus station.

[314] So we all got in the car and we talked. So Ty asked me was a liquor store by the park open.

Mr. Young: I am sorry.

Mr. Liguori: May we approach the Bench one second with the bailiff?

The Court: Yes.

(Side bar conference not reported.)

The Court: We are trying to find out the status of this noise out here, what can be done about it. So we are going to take a recess. I want you to be able to clearly hear all the witnesses. Take the jury to the jury room.

(The jury left the courtroom.)

The Court: Counsel come forward.

(Side bar conference not reported.)

Mr. Young: Your Honor, are we in recess?

The Court: I haven't yet. I am going to after I talk to you all after he has looked out there.

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Court is now in recess.
(A recess was here taken.)
The Court: Bring in the jury.
(The jury returned to the courtroom.)

[315] By Mr. Liguori:

Q. Mr. Williams, I believe before the interruption you are in the basement of Tyrone Baxter's home; is that correct? A. Right.

Q. Can you please start from there. A. So Tyrone told me to go down to the basement. Jimmy was laying across the bed. I got a seat. We shook hands. I didn't know Jimmy. It is the first time I ever met him.

Tyrone came down to the basement and he told me this was his cousin from Philly. He just left Philly. He and Jimmy had been up to Philly and were on the way to Baltimore. They needed a ride.

So Ty went in the back and, you know, like I say, we ate and everything. Ty went in the back and showed me a pistol. So, you know, we just talked and, you know, laughed and talked and didn't pay things no mind.

So it is time to go. They had a big suitcase they were both putting their clothes in. So we left. They got in the car. Tyrone asked me was the liquor store—

Q. Who got in the car? A. Tyrone and Jimmy. Jimmy got in the back. Tyrone [316] sat up front.

Q. Let me ask you something. Jimmy you have identified as Jimmy Riley; is that right? A. Yes, sir.

Q. Is there any question in your mind the person who got in the back of your car is the gentleman seated next to Mr. Young? A. No, sir.

Q. Is there any question in your mind or is that the person? A. Yes, sir. Yes, sir, that is him. I didn't know Jimmy. I had just met Jimmy that morning.

Appendix G—Excerpts of Transcript of Trial Dated December 6, 1982.

Q. Now, you are in the car. What happened? A. So Ty asked me to take him, you know—was the liquor store open by the park. I said yeah, I go there all the time. I said it's open and, you know, he asked me to take him by the liquor store, they wanted to get something to drink. I said all right.

We was about from here to—we was about from here to the wall—

Q. Just relax. Do you want some water? A. So we was about, I'd say fifty yards from the store and Tyrone told me he was going to make—

[317] Mr. Young: I am sorry. I didn't hear.

The Witness: We was about fifty yards from the store and then Tyrone told me he wanted to make a hustle so I told Ty, I said, look, man, whatever you all do I don't want to have nothing to do with it, you know. I got a baby on the way. I was working. So I went—I was taking this girl named Noreen to work at the time.

Mr. Liguori: Bring the microphone closer to you.

By Mr. Liguori:

Q. In your vernacular, in your young black vernacular, what does hustle mean to you? A. It is going to make some money.

Q. Now, what happens after Tyrone says they were going to do a hustle? A. So I told Ty and them I didn't want to have anything to do with it. You know, I start saying, you know, because I got a baby on the way and I had another one and I was working at Perdue at the time. So I had to work that night. I was working night shift.

Appendix G—Excerpts of Transcript of Trial Dated December 6, 1982.

So Ty was telling Jimmy, man, this is a good man, you know, his mother—he starts telling Jimmy about my people and stuff and I was a good person and stuff and not to get me involved in nothing. Jimmy ain't saying nothing. [318] Jimmy just is sitting back. He didn't say anything.

So I went to the projects. There is a projects by the liquor store—

> Mr. Young: I went into—I didn't hear.
>
> Mr. Liguori: Projects by the liquor store.
>
> The Witness: So I went to the projects. This girl named Noreen who I was taking to work on the night shift with us lived there. So I went to her house. Tyrone and them got out of the car at the apartment. So they got out.
>
> They went around the alley. I sit there for a second. I was, you know—I am trying to think what am I getting myself into, you know.

By Mr. Liguori:

Q. Michael, hold on one second. Let me ask you this. Let me show you State's Exhibit No. 3. This is Marsteller's Market (indicating), Feeley's liquor store (indicating). Does that help you? A. Uh-huh (affirmative).

Q. The road going past it (indicating). Where are you talking about the projects? Indicate to the ladies and gentlemen of the jury. Indicate the projects. A. These would have to be the projects right here.

[319] Q. Is that where you pulled your car around? A. I parked like up in here (indicating) because she lives on this side of the thing. So now I am trying to think, you know, what am I doing? I know I am getting myself into something, you know. I am trying to think what should I do.

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So I get out of the car to go, you know, over to Noreen's house, you know, just in case of something ever happened I wouldn't be involved in this because I was telling them all the time I didn't want to have anything to do with it and Ty was telling Jimmy and me they are not going to put me in. So, you know, there wasn't nobody home and I got back in the car. Ty and Jimmy walked back.

Q. Michael, let me ask you this before we get to that part. Who left your vehicle after you parked it? A. Tyrone and Jimmy.

Q. No question in your mind they got out of your vehicle? A. Yes, sir.

Q. Do you know where they were going? A. To the liquor store.

Q. Whose liquor store? A. Sandbar Liquor Store. So they came walking back [320] to the car and I was getting ready to leave. They came walking back to the car. I didn't even know they did anything. They came back to the car. They was calm, wasn't nobody running or nothing and, you know, Tyrone got in the car. Jimmy got back in the back; Tyrone got in the front.

Jimmy—Ty starts saying, Michael, you got to take us to State Road. I am not familiar with Delaware. I just came out of the army at the time and I knew that—there is a State Street downtown and I am thinking when they say State Road, when they first call me they want to go downtown because I had to work. I would never took them all the way up to Wilmington because I have to work that night. Ty said, no, man, you got to take us to State Road. Like I say, I am trying to take him downtown. They said, no, State Road is in Wilmington. And he told me we told you we were going to give you the gas money.

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Now, I am telling Ty, listen, man, don't put me in this. I don't have anything to do with this. I don't want no money. I don't want to have anything to do with this. You all in that. I said, Ty, look, you just keep preaching to Jimmy that I'm not involved. Don't put me in this.

So going up the State Road Ty said—him and [321] Jimmy was talking and Ty, they was saying, Jimmy, you shot him, you know.

Q. What did the defendant James Riley tell you in the car on the way to State Road, to Clemente's Cafe, whatever? A. He told me that he shot the man because the man hit him.

Q. Who told you this? A. James Riley.

Q. No question in your mind? A. No, sir.

Q. What did James Riley tell you? A. He said when the man hit him with the bottle something like they shot him and I think Ty said they was going for the man's wallet or something like that and the man wouldn't give up his wallet and the man grabbed a bottle and threw it at them. Ty told me he ducked behind the cigarette machine and Jimmy told me that he threw his arm up so the bottle wouldn't him him in the face, it would hit him on the arm and he told me out of instinct he went on and shot the man.

Q. Jimmy Riley told you that he shot James Feeley? A. Yes, sir.

[322] Q. Go ahead. A. So, you know, they was just keep saying, Jimmy, you really shot—you know, like it was something like that and I kept telling them, no, don't you all put me in this. Don't you all put me in this. So I got them to the bus station. They got out.

It is a hotel by the bus station with some trees. They both went down to the trees and that is where they

changed clothes. Jimmy had to change clothes from the smell, you know, from where the liquor splattered all over him when it hit him and Tyrone changed clothes, too. I believe he changed clothes, too.

Q. Did you see the gun? Did you see anyone hand the gun to anyone? A. Jimmy gave Tyrone the gun. Tyrone starts emptying the cartridge out of the gun.

Q. Where did the defendant give Tyrone the gun at? Where were you at? A. We was in the car.

Q. Where did the defendant take the gun from? A. From hisself.

Q. Off his person? A. Yes.

[323] Q. And he handed it to Mr. Baxter? A. Yes, and Tyrone that is when he, you know, took the shells out of the gun.

Q. And that is after the robbery? A. Yes, sir.

Q. While you are in the car? A. Yes, sir.

Q. What happened next? A. All right. So they get to the—what happened was Ty tried to give me money and I was telling Ty, I said, listen, Ty, I ain't got nothing to do with this. Don't be giving me no money. All I want is gas money because I don't want to have anything to do with it. So he just gave me the gas money to take them to the State Road. They got out. There was some bushes down there and that is where they changed clothes down in the bushes and I went on and left.

When I seen them in Baltimore, Ty told me that Jimmy said that if I—

Mr. Young: I object, Your Honor.

The Court: Pardon?

Mr. Young: I object to the hearsay.

Mr. Liguori: Tyrone Baxter can be called.

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[324] The Court: All right. I will allow you to proceed.

The Witness: Tyrone told me that Jimmy said if I tell anything I was going to be the man.

By Mr. Liguori:

Q. What does that mean to you in your vernacular? A. That I was in on it, you know, with them, you know, and—

Q. Well, you drove them there, didn't you? A. Yes, sir. Yes, sir. You know, so he told me that Jimmy said that if I would tell anything about it that I was in on it, too, and so I didn't say anything about it and we had a meeting and that is the reason I never told anything about it because I was, you know, I was scared and I was thinking that they would, you know, they would put me all in this mess and—

Q. Let me ask you this. Approximately May of 1982, this year, you came to my office with your mother and some family members and your attorney; is that right? A. Yes, sir.

Q. Before we knew anything about you, you came to us and you were going to tell us something, weren't you? A. Yes, sir.

[325] Q. And you told me lies, didn't you? A. Yes, sir.

Q. Why did you tell me lies? A. Because they said I was going to be put in it.

Mr. Young: I object, Your Honor. I think that is irrelevant.

The Court: I will sustain the objection.

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By Mr. Liguori:

Q. Did you tell me the truth when you first saw me? A. No, sir.

Q. Are you telling us the truth now? A. Yes, sir.

Mr. Liguori: Excuse me one second, Your Honor.

By Mr. Liguori:

Q. On May 8th in the presence of your mother, your attorney, James Tillman, Nathaniel Powell and two police, three police officers, you told us the version of what occurred, is that right, your involvement? A. Yes, sir.

Q. That is not the same as what you told us today, correct? A. No, sir.

[326] Q. Are you telling us the truth today? A. Yes, sir. So after that, you know, I took the test and—

Mr. Young: There was no question, Your Honor.

Mr. Liguori: Wait until I ask you questions.

By Mr. Liguori:

Q. Mr. Williams, is there any question in your mind that the defendant James Riley is the one that was in the car with you? A. No, sir.

Q. Is there any question in your mind that the defendant James Riley—look at him—is that the man who told you he shot the man in the liquor store? A. Yes, sir.

Q. Swear to God? A. Yes, sir.

Mr. Liguori: No further questions. Wait a minute.

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By Mr. Liguori:

Q. You didn't do it, did you? A. No sir.

Q. You wouldn't want to lie, would you? A. No, sir.

Mr. Liguori: No further questions.

[327] CROSS-EXAMINATION

By Mr. Young:

Q. Mr. Williams, you just told the jury that you are now telling a different version from what you told Mr. Liguori and Detective Ford and your lawyer— A. Yes, sir.

Q. —last May; is that correct? A. Yes, sir.

Q. In fact it is a dramatically different story, isn't it? It is a greatly different story—

Mr. Liguori: I object. Mr. Young would not allow me to ask why. He objected to that and unless he wants to put the statement in or get into why he can't ask that question.

The Court: I have already ruled it is not relevant.

Mr. Liguori: I have no objection to that statement coming in.

By Mr. Young:

Q. When you talked with Mr. Liguori on May 8th, whatever it was,—

The Court: Counsel come forward.

(Side bar conference not reported.)

[328] The Court: Counsel rephrase your question. There may be a misunderstanding on the question you were asking.

Mr. Young: Thank you, Your Honor.

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By Mr. Young:

Q. To be clear with you, Mr. Williams,—

The Court: You will be allowed to ask him what he said to Mr. Liguori.

By Mr. Young:

Q. I am not asking you why you said anything when you said anything at this point, I am asking you what was said. You said that you had just met Jimmy at Tyrone's house; is that correct? A. Yes, sir.

Mr. Liguori: I am sorry. Mr. Young, when are you saying he said that?

Mr. Young: May 8th.

The Court: You want to go into what he said with Mr. Liguori?

Mr. Young: Yes, Your Honor.

By Mr. Young:

Q. On May 8th when you were present as Mr. Liguori pointed out with your mother and your lawyer and [329] Mr. Liguori and I believe Detective Ford and a number of others, are you clear about that? A. Yes, sir.

Q. You said you had just met James that day; is that right? A. Yes, sir.

Q. And you said he got in the back of the car; is that right? A. Yes, sir.

Q. You didn't say anything about having hot dogs with him or lunch with him or anything, did you? A. To Mr. Liguori the day of the meeting?

Q. That's right. A. I can't say I told him that we had hot dogs.

Q. A minute ago you said to Mr. Liguori I am telling the truth now; is that right? A. Yes, sir.

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Q. Didn't you say exactly the same thing to him last May? Did he ask you if you were telling the truth and you said, yes, I am telling the truth, last May? A. Yes.

Q. And your mother was there and your lawyer was there and Mr. Liguori and others were there? [330] A. Yes.

Q. And you said that you knew nothing about any robbery; is that right? A. Yes, sir.

Q. You didn't know about it on the way to the liquor store; is that right? A. Yes, sir.

Q. Didn't know about it on the way away from the liquor store; is that right? A. Yes, sir.

Q. Never saw a gun; is that right? A. Yes, sir.

Q. You said you didn't park down by Willis Road, you parked right in front of the liquor store, didn't you? A. Yes, sir.

Q. And you never heard a shot. A. Yes, sir.

Q. Now you are represented by Mr. Wolhar, aren't you? A. Yes, sir.

Q. And he has been in and out of these proceedings as your representative, hasn't he, in the last few days? A. Yes, sir.

[331] Q. And of course you had seen James Riley at the prison in Smyrna, hadn't you? A. Yes, sir.

Q. And you said on May 8th that they were just in the store for no time and came out and nothing out of the ordinary would have occurred to you that happened in that store; is that right? A. Yes, sir.

Q. Now, you consider a killing out of the ordinary, wouldn't you? If you knew about a killing or a shooting of somebody—strike the killing—if you knew about the shooting of somebody, would you think that was out of the ordinary? A. Yes, that is out of the ordinary.

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Q. And you specifically stated at that time that you never parked on Willis Road; is that correct? A. Yes. The day I seen Mr. Liguori?

Q. On May 8th. A. Yes, sir.

Q. And you reiterated that you were absolutely telling the truth; is that correct? A. Yes, sir.

Q. But this morning you had two murder charges [332] dropped, didn't you? A. Yes, sir.

Mr. Young: That is all.

REDIRECT EXAMINATION

By Mr. Liguori:

Q. Mr. Williams, I want to hand you a copy of the transcription of the couple hours we spent together on May 8, 1982. You see those questions and answers there? A. Yes, sir.

Q. Read to yourself the questions and answers. Does that refresh your recollection as to what was asked you that particular day? A. Yes, sir.

Q. Look at the front. Turn it over to the front page, the top of it. Does that indicate who was there and when that occurred? A. Yes, sir.

Q. Your attorney was also taping this, wasn't he? A. Yes, sir.

Q. Now, look at the last page. To the best of your recollection, is that how we ended up, that last statement there? A. Yes, sir.

[333] Q. And then you got with your lawyer in Detective Ford's car and you went and showed us where the liquor store was, right? A. Yes, sir.

Mr. Liguori: Your Honor, at this time I would like to offer into evidence as the next State's

exhibit this twenty-one page transcript of a statement. I have supplied a copy to the defendant already.

The Court: Any objection?

Mr. Young: Please the Court. The statement cannot be entered in its entirety as counsel for the State knows because of indications in there that we have already—

The Court: Will you correct that?

Mr. Liguori: Save for certain excising I ask it be offered in evidence.

Mr. Young: I would ask the decision on that be withheld.

The Court: I will until it is excised.

By Mr. Liguori:

Q. Mr. Williams, on May 8, 1982, did you tell—you can look at this if you need to refresh your recollection—did you tell Detective Ford, Detective Failing, Detective Sigler and myself in the presence of your [334] family that you picked up Tyrone Baxter and James Riley at Tyrone's home and drove them to the Sandbar Liquors Store? A. Yes, sir.

Mr. Liguori: No further questions.

Mr. Young: No questions, Your Honor.

Mr. Liguori: Could this be marked for identification?

The Court: All right. It will be marked State's C, for Identification.

(Statement marked, "State's Exhibit C, for Identification.")

The Court: You may step down. Thank you.

(The witness stepped down.)

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The Court: Counsel?

(Side bar conference not reported.)

The Court: If you will return to the witness room.

Mr. McNulty: Your Honor, the State calls Dr. Judith Tobin.

The Court: Mr. Garrity, if you will inform the last witness not to discuss his testimony with anybody else.

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[335] *CERTIFICATE OF REPORTER*

I, Debra L. Mitchell, Official Court Reporter of the Superior Court, State of Delaware, do hereby certify that the foregoing is an accurate partial transcript of the testimony adduced and proceedings had, as reported by me, in the Superior Court of the State of Delaware, in and for Kent County, in the case therein stated, as the same remains of record in the Office of the Prothonotary of Kent County, at Dover, Delaware.

WITNESS my hand this _____ day of _____, A. D. 1983.

_____

Debra L. Mitchell
Official Court Reporter

APPENDIX H

Transcript of Immunity Meeting

Saturday, 8 May 1982, approximately 1420 hours in the office of Deputy Attorney General James Liguori also present James Tilghman, Julia Powell, Nathaniel Powell, Bob Wolher attorney for Michael Williams, DAG James Liguori, Detective John Sigler, Detective Sergeant Boyce Failing, Detective Ford.

Wolher: We are present in Mr. Liguori's office today pursuant to a letter that was initially dated May 3, 1982 addressed to Robert Wolher, Esq. Wolher-Moore 107 S. Race Street, Georgetown, Delaware 19947. That letter has been amended by handwritten notations on it. I will read that at this time. Dear Bob: Pursuant to our telephone conversation with your client named above, was not directly involved in the Feeley homicide, this office will extend to him use and transactional immunity for his testimony. And that was amended today by handwritten notes which state: He will not receive immunity for robbery of the liquor store, nor for the conspiracy to commit the robbery of the Feeley Liquor Store. Let me make it perfectly clear, this homicide immunity is conditional upon your client not being either the shooter or the other individual who entered the Feeley Liquor Store when the murder occurred. We believe your client, at this time, was neither of the above. This offer is premised upon our belief that Mr. Williams was waiting in a vehicle while the two actual participants committed the murder. If, after listening to Mr. Williams, this information proves to be false, either through his failing of polygraph or otherwise, this immunity is of no force and affect. If he passes and shows no deception on the polygraph with regard to the robbery or conspiracy we will not

proceed with any charges against your client for his testimony. Very Truly Yours, James E. Liguori, Deputy Attorney General.

Also handwritten on May 8, 1982 says note well [sic] of all handwritten materials were made May 8, 1982 2:00 p.m. by myself initialled James Liguori. Prior to proceeding I would like to see if Mr. Williams fully understands what is involved here. Basically what is involved is the State has promised to give you immunity to the homicide regarding the Feeley murder, however, the State is not going to give you immunity to the Robbery and Conspiracy and apparently no other charges will be prosecuted except the Robbery and Conspiracy and Mr. Liquori is not in agreement. Any statement that you make today pertaining to the Feeley incident will relate not only to the murder but also to the robbery and conspiracy. That means that any statement that you make regarding this matter at all can be used against you in the robbery or the conspiracy charge and it can be used in a court of law and since an attorney is present advising you the chances are that you will not [2] be able to attack any statements that you make here in the Robbery or Conspiracy charges, do you understand that?

Williams: Yes, sir.

Wolher: Okay. The State has also indicated that if you pass a polygraph examination with respect to the robbery and conspiracy charges that you had no prior involvement, anotherwords [sic], that you didn't know that a robbery was about to be committed, or murder was about to be committed, and after the

incident, I assume on that day or within a few days thereafter that you had no direct knowledge that the robbery or conspiracy or the murder was committed on that day at the Feeley Liquor Store, then if that polygraph shows your lack of knowledge with respect to that incident, the State will not prosecute you for the robbery and conspiracy, if however, the polygraph examination shows that you are being deceptive, you're not telling the truth about your knowledge or if you are infact lying about your knowledge, that information can be used, I assume, in a court of law against you and the State will proceed with the robbery and conspiracy charges. Do you understand that?

Williams: Yes, sir.

Wolher: And one other fact that I would like to point out here is that the State has indicated that they will recommend that $15,000 secured bail for the two charges for which you will be arrested today which is the robbery and the conspiracy charges, is that correct Mr. Liguori?

Liguori: Okay.

Wolher: With all this information in mind, do you have any question pertaining to anything before you talk to Mr. Liguori.

Williams: Okay.

Wolher: Okay. Now I'm sure that Mr. Liguori or one of the police officers are going to advise you of certain rights that you have but let me explain those to you. You have an absolute right not to testify. Not to make any statement to these police officers or to

Mr. Liguori. That is a Constitutional right that you have. Do you understand that right?

Williams: Yes, sir.

Wolher: You have me present here today and I am an attorney licensed in Delaware so that right is being complied with, you have a right to have an attorney present. If during the course of the questioning you decide that you do not want to make a statement to the Police Officers or to Mr. Liguori, you have a right to indicate that you are not going to, you don't want to answer that question, however, what I would suggest is that you confer with me if there is any question that you are not certain of since we are here basically to cooperate with the police. [3] Do you understand those rights?

Williams: Yes, sir.

Wolher: Do you have any questions at all as to what is going on or why we're here or what's involved or what the consequences will be?

Williams: No, sir.

Wolher: Do you understand, with respect, the robbery charge, that if you were convicted of that charge, carries a minimal manditory time in jail of up to three years and the maximum, I believe, is 30 years. Is that correct Jim?

Liguori: Yea. Three to thirty on the robbery zero to seven on the conspiracy. You have to do at least three years on the robbery in jail, no probation, no parole, if convicted. Those charges 3-30 and 0-7 run consecutively that means they run one after the other

so if you got the maximum of 30 years and got the maximum of 7 years that would not run at the same time. You would do 30 and then you would do 7. Do you understand that?

Williams: Yes, sir.

Liguori: Have you had any drugs or alcohol in the last 24 hours?

Williams: I had something to drink.

Liguori: Okay, are you intoxicated now?

Williams: No, sir.

Liguori: Mom, do you think he is intoxicated now?

J. Powell: I don't think he is now, I want to go out.

Wolher: Pardon me. You want to be excused?

J. Powell: Yes.

Wolher: Okay at this time Mrs. Powell asked to be excused from the interview.

Liguori: Let me ask you this, how long have you known that we were going to come and talk to you?

Williams: I don't know, about two weeks, when I went to see . . .

Liguori: Okay, so you have known for a couple of weeks that you were going to potentially cooperate with us, is that right?

Williams: Yes, sir.

[4] Liguori: How far did you go in school?

Williams: 12 [sic] grade . . .

Appendix H—Transcript of Immunity Meeting.

Liguori: So you are an intelligent person you know what it means to be voluntary and involuntary right?

Williams: Yes, sir.

Liguori: This is what on your part.

Williams: This is voluntary.

Liguori: Okay, you want to do this?

Williams: Yes, sir.

Liguori: Now let me just tell you four things . . .

Wolher: Before you do anything, let me make sure that he understands about these penalties. Do you understand that the statement that you give today, may result in your conviction for robbery in the first degree and conspiracy 2nd. That means that your statements here today could be used in a court of law against you and you will probably be convicted on these statements and the other evidence that the State has and could possibly face 37 years in prison. Three, the first three of which are mandatory, which means they are not subject to paroles, suspension, or probation. Do you understand that?

Williams: Yes, sir.

Wolher: Now in the event that you pass the polygraph showing that you have no prior or subsequent knowledge of this incident at the time that it occurred the State will not prosecute, but if the polygraph shows that you are lying and you did have prior knowledge or later knowledge that these statements that you make today can be used

against you in court and probably will convict you if the jury listens to this tape and hears that your lawyer is talking to you in the presence of Mr. Liguori and these three detectives and you have your family present. Do you understand all of this?

Williams: Yes, sir.

Wolher: At this time Mr. Liguori is going to give you some rights, if you have any questions about those, you ask me, okay.

Williams: Okay.

Liguori: I'm not going to give you rights yet, I'll leave that up to the police officers, what I'm going to do with you is set the groundwork with you. You're here cooperating with us simply because, if you don't cooperate we're going to arrest you on a Felony Murder. Okay. That is without bail. Tyrone Baxter and James Riley have been arrested for the homicide [5] murder of James Feeley. Okay. We have in this State, as Mr. Wilher will tell you, a Felony Murder Doctrine which means any murder committed during the commission of a felony the participants are liable for the murder. Alright. Now in exchange for our not arresting you on Felony Murder of James Feeley, you are going to give us a complete statement, confession, whatever, with regard to everything you know about meeting those two individuals and what, if anything, you have done with them since the day of the homicide. Agreed?

Williams: Yes, sir.

Appendix H—Transcript of Immunity Meeting.

Liguori: If you do not cooperate, the deal is off. Okay. If subsequent to this and I have spoken with Mr. Bisbee, it will be early next week, Monday or Tuesday, we will put you on a polygraph, lie detector test, and if there is an indication that you are not telling us the complete truth or withholding from us, the deal is off. Basically, Michael, this is your one chance to stay out of jail for the rest of your life. You either take it and cooperate or we will arrest you. Alright. Now you're willing to cooperate?

Williams: Yes, sir.

Liguori: Okay, you've spoken to Mr. Wilher awhile about that, right? Okay I'll let . . . cause they're going to arrest you now . . .

Wolher: Let me just cover this up and make sure we get this clear too. Okay Mr. Liguori is saying that he wants total and complete cooperation in exchange for your not being arrested for the Felony Murder charge. He also indicated that it is life in prison and they could also seek the death penalty which is a possible penalty. I don't know what the State's position will be with respect to you, but you should completely tell him everything as he said, this is your opportunity to clear the matter up, tell him everything that you know about the case. This will be followed up with a polygraph examination for two reasons. To determine whether or not the State is going to proceed on the robbery and conspiracy charges and secondly, to see whether or not what you have told Mr. Liguori today is the truth and these officers here. Do you understand that?

Williams: Yes, sir.

Appendix H—Transcript of Immunity Meeting.

Wolher: And you are willing to fully cooperate with the State in exchange for the promises of immunity on the murder charge and the concessions they have made with respect to robbery and conspiracy if you pass the polygraph?

Williams: Yes, sir.

Liguori: John, why don't you arrest him.

Wolher: You can just sit right there.

Sigler: I am Detective Sigler of the Dover Police Department and this is Detective H. Lee Ford of the Dover Police Department, we presently hold warrants [6] charging you will [sic] conspiracy 2nd degree and robbery in the 1st degree. At this time we are placing you under arrest for those charges. Do you understand that?

Williams: Yes, I do.

Sigler: Do you also understand that you have the right to remain silent? That anything you say can and will be used against you in a court of law, do you understand that?

Williams: Yes, sir.

Sigler: You have a right to talk to a lawyer and have him present with you while being questioned, do you understand that?

Williams: Yes.

Sigler: If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish one, do you understand that?

Williams: Yes.

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Sigler: You can stop answering questions at any time, do you understand that?

Williams: (no answer heard)

Sigler: Do you understand each of these rights as I have explained them to you?

Williams: Yes.

Sigler: With these rights in mind, do you wish to talk to us now about what you know about the robbery, conspiracy, and murder that occurred at Sandbar Liquors where James Feeley is the victim on February 8, 1982, in the City of Dover.

Williams: Yes, sir.

Sigler: You have given me several answers to the question about whether or not you understand these rights, were all of those answers in the affirmative were they all yes?

Williams: Yes.

Wolher: If you have any question of any nature, whatsoever, about the rights that the officer has just read to you. Do you have any questions about the charges that you have been arrested for?

Williams: No sir.

[7] Wolher: Do you understand your legal rights about not making a statement and you can stop questioning at any point and time?

Williams: Yes.

Wolher: You understand that you have a right to an attorney and that you do have an attorney present

and if you don't want me as an attorney you could select someone else as an attorney, even at the State expense, do you understand that?

Williams: (no answer heard)

Wolher: Okay, with those facts in mind do you still want to make a statement to the police?

Williams: Yes.

Wolher: Fully cooperate?

Williams: Yes.

Wolher: Okay, fine.

Ford: Okay, Michael, do you know James Riley and Tyrone Baxter?

Williams: I don't know James, but I know Tyrone. I've met him through the church.

Ford: You do not know James Riley?

Williams: No I met him that day.

Ford: Was he introducted [sic] to you the day that you are speaking of?

Williams: Yes, sir.

Ford: And what day was that?

Williams: I'm not sure.

Ford: February 8, 1982 is the day of the robbery homicide at the Sandbar Liquor Store. Is that the same day that we are speaking of?

Williams: I don't know.

Appendix H—Transcript of Immunity Meeting.

Ford: Do you remember what [sic] day that you were contacted by Tyrone in his attempt to get a ride.

Williams: (no answer heard)

Ford: Do you remember approximately when that was? The month that it was?

Williams: No, it's just been a little while.

[8] Ford: Can you take a guess as far as one month, two months, three months?

Williams: If I had to guess I would say three, four months . . .

Wolher: Was it after Christmas?

Williams: Yes.

Wolher: Was it before the weather got warm?

Williams: No, it was still cold.

Ford: The day that we are speaking of, when was the first contact that you had from either of these two people, either Riley or Baxter?

Williams: Well, I was waxing the car and Tyrone called, I thought he was another friend of mine, another friend named Tyrone so I asked him what he was doing and he told me that he had just came from Philadelphia. He asked me if I could take him to the bus station and I told him that I was out waxing the car and I didn't have any gas and so he said he'd pay me, well I didn't tell him yes right then, I says, call me back and I'll let you know. I hung up the phone and went on and kept cleaning the car. So he called me back later on and asked me if I would do it and I told him yes.

Appendix H—Transcript of Immunity Meeting.

Ford: Where were you waxing your car at?

Williams: My mothers yard.

Ford: Where is that located.

Williams: 8 Draper Drive.

Ford: Approximately what time was it that you got the first call?

Williams: It wasn't late, it wasn't late—unintelligible—

Sigler: Can we ask you to speak up a little bit, the tape recorder is on.

Williams: Yes.

Wolher: Try to keep your voice up so we can get everything on tape.

Ford: Was the first call before noon or after noon?

Williams: I'm not really sure. I'm not really sure.

Ford: Do you remember what time approximately the second call would have been?

Williams: Well, I would say that it was after about an hour it was about an hour later because I told him to call me back in about an hour.

[9] Ford: And it was daylight or dark?

Williams: It was daylight.

Ford: And the person that called you was Tyrone Baxter?

Williams: Yes, sir.

Ford: And would you repeat again what he wanted from you at that time?

Appendix H—Transcript of Immunity Meeting.

Williams: For me to take him to the bus station.

Ford: Did he say which bus station he wanted to go to?

Williams: Yes, sir.

Ford: And which one was that?

Williams: State Road.

Ford: And it is my understanding that you agreed to do that?

Williams: Well I told him to call me back and then I said yes.

Ford: The second call you agreed?

Williams: Yes, sir.

Ford: Where did you contact Tyrone at?

Williams: No he called me.

Ford: No, I mean once you had agreed to pick him up . . .

Williams: Oh, I had to go pick him up at his house.

Ford: Do you know the location of his house?

Williams: It is in Capitol Green, I don't know the address. I know the house but I don't know the address.

Ford: Do you know which street it's located on?

Williams: No, sir.

Ford: When you went there, was he alone or with someone else.

Appendix H—Transcript of Immunity Meeting.

Williams: He was there, his mother was there, this other lady was there, and Jim was there.

Ford: You're speaking of Jimmy, was he introduced, was this person introduced to you as Jimmy?

[10] Williams: Yes, Tyrone told me that that was his cousin, his cousin.

Ford: And he was introduced to you as Jimmy?

Williams: Yes.

Ford: Once you reached that residence and met with Jimmy and Tyrone, where did you proceed from there?

Williams: Well, we was on our way to State Road and they asked to stop at the store and get something to drink and I took them to the store.

Ford: Which store are you speaking of?

Williams: The one right by the 7-11 the liquor store right by the 7-11.

Ford: Do you know what street or road that is on?

Williams: No, sir. Right near the park.

Ford: Now you're speaking of the park, are you talking about the Whiteoak Park, where there's a softball field and so forth?

Williams: Yes.

Liguori: You'll take us by this liquor store later today?

Williams: Excuse me?

Appendix H—Transcript of Immunity Meeting.

Liguori: You'll take us to this liquor store later today?

Ford: You could show us how to get there?

Williams: Yes.

Wolher: Also that place that he was living, in Capitol Green, do you know which house it was?

Williams: Yes, sir, I can take you there.

Wolher: Okay the tape is stopped, I had to interupt [sic] to make a phone call regarding a case.

Ford: Okay Michael, I think we were trying to determine basically where this store was, I think you said that you could take us to that location, is that correct?

Williams: Yes, sir.

Ford: Who did you take to the store?

Williams: I took Tyrone and Jimmy.

[11] Ford: And there was no one else in the vehicle with you at the time?

Williams: No sir.

Ford: Could you describe what type car that you have?

Williams: I drive a '74 Lemans Pontiac.

Ford: And the color of the car?

Williams: Yellow. Yellow and Beige.

Ford: Is it a Beige top and yellow bottom or . . .

Williams: Yes.

Appendix H—Transcript of Immunity Meeting.

Ford: Do you know the tag number on the car?

Williams: Just the numbers 511 I can't . . . .

Ford: And State that the . . .

Williams: North Carolina.

Ford: And it has three letters, I understand, before this or two, do you know?

Williams: I just never really paid any attention.

Ford: But the last three digits are 511?

Williams: 511.

Ford: What was said to you by either Tyrone or James Riley to make you go to that particular liquor store?

Williams: Well we was just talking, jiving, and they said let's stop at the liquor store and I said alright. And we went to the liquor store.

Ford: Where were you at, where were you coming from?

Williams: We were coming from Tyrone's house and we was on Rt. 13.

Ford: Can you tell me how you proceeded from Tyrone's, streets and so forth if you can recall?

Williams: Well, like down on 13 and they said well let's stop at the liquor store and I said alright and it wasn't that we, you know, the liquor store I took them to is the one that I always go to. So I just went on and turned in there and took them to the liquor store.

Ford: The liquor store, you say you always go there also?

Williams: Yes, sir.

Appendix H—Transcript of Immunity Meeting.

Ford: Do you know the name of that liquor store?

Williams: (answer not heard)

Ford: Where did you park at when you went to the liquor store?

Williams: On the lot, they got a lot, I turned the car off . . .

Ford: As you are facing that liquor store, to the right of the entrance of the liquor store, to the left or, do you recall?

Williams: I was facing on the left side, I pulled in, they jumped out of the car and I turned the car around and pulled it over to the side and waited for them. They went in I'd say they were in there for about not even . . . they weren't even in, no time at all, they went in they came on out, they had a beer—unintelligible—

Ford: When you were parked in the parking lot were you, yourself facing toward the liquor store or were you facing away from it?

Williams: Well you know I normally pull into parking lots like that, it's just a habit I got . . .

Ford: You were facing towards the road?

Williams: Yes.

Ford: What did you buy, or what did they buy?

Williams: They had some beer.

Ford: Do you remember what kind of beer?

Williams: I think it was Miller or Pabst or something, I'm not really sure, I normally drink Miller that's why . . .

Appendix H—Transcript of Immunity Meeting.

Ford: Did you drink any of it that day after they came back out?

Williams: (Answer not heard)

Ford: Do you recall if it were bottles, cans, quarts . . .

Williams: Cans.

Ford: Cans of beer?

Williams: Yes.

[13] Ford: But you don't recall what brand name that may have been?

Williams: Probably Millers, I would say Millers.

Ford: When they came out of the store, were they in a hurry or say something to you that indicate that they may be in a hurry?

Williams: They came in, they was laughing when they got out and they were still joking—unintelligible—

Sigler: How many beers did they bring back to the car?

Williams: One.

Sigler: How many?

Williams: One.

Sigler: One beer they brought back.

Williams: They bought me a beer.

Sigler: Did they buy themselves any?

Williams: No, they bought me one.

Sigler: Did they buy anything else for themselves, that you are aware of?

Appendix H—Transcript of Immunity Meeting.

Liguori: Let me just tell you something. Remember, you have to tell us the truth, alright?

Williams: Yes, sir.

Liguori: Here's what I want you to do, we have a witness that saw your car parked on Willis Road . . .

Williams: Yes, sir.

Liguori: Do you agree with me?

Williams: No, sir.

Liguori: You don't agree with me?

Williams: No sir.

Liguori: Make sure that you tell us the truth.

Williams: Yes, sir.

Liguori: The moment that you don't tell us the truth about anything, it's off.

Williams: Yes sir.

Wolher: You can show them where you parked your car when they take you out there, can't you?

Williams: Yes, sir.

Ford: One other thing that I might add that Mr. Liguori just brought out, that there is an eye witness that saw these two people running from the store and which way they proceeded from the store, which at the moment is not corresponding with what you are telling us. Okay. I'm going to go back over this again and if what you are telling us is the truth and I don't expect you to change it any, if it is not, as it was just explained, it is a one time thing.

Appendix H—Transcript of Immunity Meeting.

Wolher: It is going to be verified too on the polygraph, to show that what he is saying here, you know, if he is not deceiving anybody obviously witnesses might be inaccurate.

Ford: That is correct.

Sigler: Mr. Williams, may I ask one other question, who is the car registered to?

Williams: Me.

Sigler: In your name Michael A. Williams?

Williams: Yes.

Sigler: At what address?

Williams: Fort Bragg.

Liguori: Have you ever taken Tyrone and James to that liquor store before?

Williams: I took Tyrone there before, I never took James there before . . .

Liguori: Do you know when Jim Feeley was killed, do you know about when he was killed?

Williams: I heard it but . . .

Liguori: In relation to when you heard about it, when did you take Tyrone and James Riley to that liquor store?

Williams: You know, it never really fazed me, I just took them to the store and they went in and they came on out.

Liguori: Well, was it before or after the homicide, after the murder?

Williams: It was before then, because after that they had closed down.

Appendix H—Transcript of Immunity Meeting.

Williams: Nothing, I just went to State Road. I asked them which way it was and they told me—unintelligible—

Ford: They made no mention of anything out of the ordinary happening in that liquor store that day?

Williams: (answer not heard)

Ford: And you proceeded in what direction to get back to . . .

Williams: I had to make a left and go up to the light and make a right and kept on going.

Ford: You make [sic] no other trips after leaving there, you proceeded straight out to the highway and then to the bus station?

Williams: (answer not heard)

Liguori: Let me ask you a question, why did you think that you needed a lawyer to come here?

Williams: Well, my mother, she had just came down, you know, she asked did you hear about, first she was telling me about the thing and everything . . .

Liguori: About what thing?

Williams: About the murder. And she was telling me, did you have anything to do with it, and I told her no, and she said, well did you take Tyrone to the liquor store and I said yes ma'am, and she said that Tyrone and them was involved in this thing and that's why I had to get a lawyer.

Liguori: So you thought that because you had taken Tyrone to the liquor store a murder had occurred?

Williams: No, sir.

Appendix H—Transcript of Immunity Meeting.

Liguori: Why then?

[16] Williams: Well my momma told me that the police were looking for Tyrone and them for that thing and she asked me did I take them to the store and I told her yes and she . . .

Liguori: Okay, did you take them to the store, according to your mother, or according to you, if your mother refreshed your recollection, the day that the murder occurred?

Williams: That, I wouldn't know.

Liguori: Are you close with Tyrone?

Williams: (answer not heard)

Liguori: Did you stay with him in Baltimore at all?

Williams: No sir.

Williams: Tyrone got up front when we went to the liquor store, but when they got back in the car—unintelligible—

Sigler: Okay, Jimmy was in the back on the way to the store and Tyrone was in the front?

Williams: Yes.

Sigler: I didn't quite understand your answer about where they were in the car when they came back, were they in the same seating positions?

Williams: I would probably say that Tyrone was in the front. Because I know the guy through the church, but Jimmy that's the first time that I saw Jimmy and was introduced to him.

Appendix H—Transcript of Immunity Meeting.

Sigler: Would it be fair to say that if there was any conversation between Tyrone and Jimmy that you might have heard it? Or would have heard it? While they were in your vehicle?

Williams: Well, we was talking.

Sigler: You were all talking, all three of you?

Williams: We were talking.

[17] Sigler: Was there a stereo going in the car, or a radio?

Williams: (answer not heard)

Sigler: Was it real loud, or could you understand Tyrone . . .

Williams: Oh, no, we was just talking.

Ford: Was the car that you had on [sic] that particular day, was it a two door or a four door?

Williams: Two door.

Ford: Did they have anything with them that day that they brought with them when you picked them up from Tyrone's residence?

Williams: Suitcases.

Side two of the tape.

May 8, 1982 pertaining to Michael Anthony Williams in the office of Deputy Attorney General Jim Liguori.

Ford: Okay Michael . . .

Liguori: Excuse me, so Mr. Wolher can get out of here we're going to stop now and we are just going to give him a polygraph on that. Okay, he's told us

enough, now we'll talk to him again, cause I think he is lying to us.

Sigler: Michael, before we go any further, where is the car now that you used that day?

Williams: Home.

Sigler: Where is home?

Williams: In Baltimore.

Sigler: Where in Baltimore? What's the address?

Williams: 2313 Ashland Avenue.

Sigler: What was it again, I'm sorry.

Wiiliams: 2313 Ashland Avenue.

Sigler: How do you spell that?

Williams: A-s-h-l-a-n-d.

Sigler: Do you remember what you were wearing that day?

[18] Williams: No, sir.

Sigler: Do you remember what Tyrone was wearing that day?

Williams: No sir.

Sigler: Do you remember what James Riley was wearing that day?

Williams: No sir.

Sigler: Do you own a field jacket?

Williams: Do I own a field jacket, yes I have two field jackets.

Appendix H—Transcript of Immunity Meeting.

Sigler: You have two field jackets. Is it possible that you might have been wearing a field jacket that day?

Williams: No, it was cold . . .

Liguori: Can we just stop for a moment, Mr. Wolher has a phone call.

Wolher: Okay, Mr. Williams, Mr. Liguori has indicated that, I think we were off the tape at that time, but he doesn't think that you are telling the truth, now . . .

Liguori: All the truth . . .

Wolher: Yea, all the truth, it is important that you completely tell him everything that is involved here, because like he said they don't want to play any games and they are trying to investigate this, if you are not involved, they want to know that, but if you are involved, you'd rather be involved with the murder, robbery, and conspiracy as opposed to the murder, so if there is anything that the officers have already asked you about this case, and you think that you can provide us with more information, well I think you should do it. They are going to follow this up with a polygraph examination and I guess Officer Bisbee will do it and if you are not telling the truth, he'll be able to tell deception. There's no way that you are going to be able to beat the polygraph examination so it's important that you are willing to cooperate and you have cooperated to this extent that you have completely revealed all information that you have available to us, okay.

Appendix H—Transcript of Immunity Meeting.

Liguori: Let me just say it again, this is the only chance that you've got. Do you understand what I mean.

Williams: Yes, sir.

Liguori: What I'm trying to say is Tyrone has already talked, alright?

Williams: Yes, sir.

Liguori: It's different, people have seen different things than what you are telling us.

[19] Williams: Yes, sir.

Liguori: I'm giving you this one chance, I don't need to fool around, okay. If you take a polygraph, you've already told us one little lie, I'm going to arrest you for murder. You have amunity [sic], nothing is going to happen to you on the murder, the more you cooperate the better the court's going to look at it when they try to sentence you on the robbery. The less you cooperate, they'll give you 37 years in jail, maybe do you want to take a few minutes and think about that date.

Williams: —unintelligible—

Wolher: You're cooperating, you're telling the truth. Okay.

Liguori: Okay, just ask him those two questions and then let's go.

Ford: On the day, or day or two later after you had taken Tyrone and James to the bus station, did you receive a call from Tyrone's mother?

Williams: Yes sir.

Appendix H—Transcript of Immunity Meeting.

Ford: Could you relate to me what that conversation was?

Williams: She asked me did I take Tyrone to the bus station and I told her yes and she said, did you stop anywhere else and I said no.

Ford: Did she indicate to you that she thought that Tyrone might be involved in a robbery or murder.

Williams: No because when I told her no she just . . .

Ford: Approximately how many days after you had taken them to the bus station was that?

Williams: I don't know,—unintelligible—

Ford: Just a few days later.

Sigler: Why did you tell Joyce Baxter that you had not taken them anywhere else when infact [sic] you actually had?

Williams: I don't know, it is just one of those things.—unintelligible—

Sigler: Why, if she didn't tell you that she thought that they might be involved in a crime, didn't you want to tell her that you had taken them to a liquor store.

Williams: Like I said . . .

Sigler: That doesn't make any sense to me, would you explain that to me?

[20] Williams: Well all she did was she said, where did you and Tyrone go. I said they asked me to take them to the bus station, and I told her that I took them to the bus station. She said, did you all stop anywhere and I told her no.

Appendix H—Transcript of Immunity Meeting.

Sigler: Why did you tell her no? When infact [sic] that is not the truth?

Williams: No really . . .

Sigler: If you did not have any idea that they had committed any kind of a crime, why did it make any difference that you should tell the mother of one of the participants of the crime or one of the alleged participants that you hadn't taken them to the liquor store when all they had done is supposedly bought you a beer. What's wrong with that?

Williams: I don't know, I'm thinking on the question that maybe I probably told her that because my mother is a preacher—unintelligible—

Sigler: But you don't know why at this point?

Williams: Why I didn't tell her?

Sigler: Yea.

Williams: You know, I have my reasons . . .

Sigler: What were those reasons?

Williams: One was because like I said, my mother is a pastor and another one is . . I don't know it's a habit that I got, if I'm talking to my friends mother and they asked me if he did get drunk or something, I'd say no he didn't get drunk or . . .

Sigler: Let's back up, the way I understand when you pulled into the parking lot and made sort of a U-turn in the parking lot, let the other two guys out, Tyrone Baxter and James Riley, they went in the liquor store, came back out, gave you a beer, and you took them to Wilmington to the bus stop.

Williams: Not to Wilmington, to State Road.

Sigler: State Road, Okay, I'm sorry, I'm from downstate and to me that's Wilmington. Willis Road. Did you ever park your vehicle on Willis Road that day?

Williams: I don't even know where Willis Road is. When I took them to the store I parked in the parking lot.

[21] Sigler: Do you know anybody that lives in Dickinson Arms Apartments?

Williams: I know, those apartments right next to, right next to the park, are you talking about . . .

Sigler: No those are Manchester Square. These are Dickinson Arms these are on Willis Road and Willis Road runs north and south to the east side of that Liquor Store. Anotherwords [sic], as you are facing the liquor store Willis Road is on the road to your left and these are the apartments that run up and down that road. Did you park your car on that road that day? That afternoon?

Williams: No, I do know one project, I don't know the name of it, but I do know someone that lives there.

Sigler: Where is that?

Williams: These is the projects right next to the park.—unintelligible—

Liguori: Did you park your car there that day?

Williams: No, sir.

Sigler: You are absolutely positive?

Williams: Yes sir.

Ford: And you remained there the entire time while they were in the store, you didn't leave and come back?

Williams: No sir, they wasn't in there they went in there and came right on out.

Ford: I have nothing further at this time.

Wolher: Okay, at this time the tape in [sic] concluded. At this time we are going to leave Mr. Liguori's office and Mr. Williams is going to accompany the Dover detectives to the various locations that are referred to on the tape to show the officers exactly which liquor store was involved as well as if they are interested, which house of the other codefendant was living in and also where he parked his vehicle and I will accompany Mr. Williams in the police officer's vehicle in route to the various locations.

APPENDIX I

U.S. Constitution Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX J

U.S. Constitution Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

APPENDIX K

U.S. Constitution Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX L

Delaware Rule of Evidence 410

Except as otherwise provided in this rule, evidence of a plea of guilty later withdrawn with court permission, or a plea of nolo contendere, or of any offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

APPENDIX M

11 Delaware Code Sec. 512

A person is guilty of conspiracy in the second degree when, intending to promote or facilitate the commission of a felony, he:

(1) Agrees with another person or persons that they or 1 or more of them will engage in conduct constituting the felony or an attempt or solicitation to commit the felony; or

(2) Agrees to aid another person or persons in the planning or commission of the felony or an attempt or solicitation to commit the felony; and he or another person with whom he conspired commits an overt act in pursuance of the conspiracy.

Conspiracy in the second degree is a class E felony.

APPENDIX N

11 Delaware Code Sec. 832
(prior to July 2, 1982)

(a) A person is guilty of robbery in the first degree when he commits the crime of robbery in the second degree and when, in the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime:

(1) Causes physical injury to any person who is not a participant in the crime; or

(2) Displays what appears to be a deadly weapon; or

(3) Is armed with and uses or threatens the use of a dangerous instrument.

Robbery in the first degree is a class B felony.

(b) Notwithstanding §§4205(b)(2) and 4215 of this title, a person convicted a second or subsequent time for robbery in the first degree shall be sentenced to a term of imprisonment for not less than 10 nor more than 30 years and the court shall not suspend the sentence of such person, nor give such person a probationary sentence, nor shall the term of imprisonment imposed under this section run concurrently with any other term of imprisonment imposed for the commission of such offense.

(c) The minimum sentence of imprisonment required by this section and §4205 of this title for a first offense shall not be subject to suspension, and no person convicted under this section shall be eligible for probation or parole during the first 3 years of such sentence.

Supreme Court, U.S.
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ALEXANDER L. STEVAS
CLERK

No. 84-1910

In The
Supreme Court of the United States
October Term, 1984

MICHAEL A. WILLIAMS,
Petitioner,

vs.

STATE OF DELAWARE,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

RESPONDENT'S BRIEF IN OPPOSITION

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July 25, 1985

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STATE OF DELAWARE,

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

RESPONDENT'S BRIEF IN OPPOSITION

The State of Delaware, respondent, asks this Court to deny this petition to review the judgment and opinion of the Delaware Supreme Court entered March 8, 1985.

OPINION BELOW

The opinion of the Supreme Court of Delaware dated March 8, 1985, reproduced in the Pet. for Cert. App. E, is now officially reported at 491 A.2d 1129 (Del. 1985).

JURISDICTIONAL GROUNDS

Williams invokes jurisdiction pursuant to 28 U.S.C. § 1257(3) which permits this Court to review a state court decision if a federal constitutional claim has been "specially set up or claimed." To the extent that the language prescribes a jurisdictional limitation, this Court lacks jurisdiction over issues one, two three, four and eight. Those issues were not presented to the state courts.

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COUNTER STATEMENT OF THE CASE

1. The Robbery

In the morning of February 8, 1982, Michael Williams, in exchange for "gas money", agreed to drive Tyrone Baxter, a friend, from Dover, Delaware to a bus station at State Road, Delaware, approximately forty miles away. When Williams went to Baxter's home at around noon, Baxter introduced him to James Riley, indicating that he would also be going to the station. In the house, Baxter also showed Williams a box containing a pistol. Pet. for Cert. App. [App.] at 6a.

Within a few minutes after the trio started their trip to the station, Baxter asked Williams to stop at a liquor store. As they approached the store, Baxter and Riley said they had to get some money and spoke of doing a "hustle." While expressing his desire not to be involved, Williams drove to the liquor store. He did not park his car in the store's parking lot but on an adjacent street. As Baxter and Riley went into the store, Williams went to

"visit" a friend in a nearby apartment complex.[1] Not finding his friend at home, he returned to his parked car, waiting until Baxter and Riley returned. App. 7a. As they drove towards the bus station, Williams asked them what had happened. The two told him that they had taken some money and that Riley had shot the clerk. When Williams asked why Riley had to shoot the clerk, they detailed to him the events of the robbery. Trial Transcript [TTr.] 39 [App. 27a].[2] Williams drove Baxter and Riley to the depot, watching as they changed their clothes in a nearby clump of trees. After Baxter gave him twenty dollars for gas, Williams returned to Dover and went to work. App. 7a. For two months, while the police searched for the robbers, Williams never mentioned the March 8th events. TTr. 88 [App. 48a].[3]

2. The Co-operation Agreement

Ten weeks after the killing, after his mother had been questioned by the police, Williams retained an attorney. Defense counsel then contacted the local prosecutor in an effort to gain some favorable treatment for Williams in return for his co-operation. App. 7a.

In May, 1982, defense counsel and the prosecutor arrived at an agreement. Acting on the assumption that Williams was not the "triggerman" and had not entered

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1 Williams indicated he went to the apartment because "in case something ever happened, I wouldn't be involved." Prosecution's Trial Exhibit (S. Exh.) 7 at 319 [App. 74a].

2 The robbery netted $150.

3 Several days after the killing he told Baxter's mother that her son was not involved. He also visited with Baxter in Baltimore. TTr. 107-108 [App. 60a-61a].

the store, the prosecutor agreed not to prosecute him for murder. In return, Williams promised to give a statement concerning the events of February 8th and to testify against the other individuals.[4] The prosecutor declined to make any present agreement concerning the robbery and conspiracy charges. Rather, the parties agreed that if Williams, after giving his statement, "passed" a polygraph examination on his assertions that he had no knowledge that a robbery or murder was to be committed when he drove to the liquor store, the other two charges would be dropped. However, if the polygraph showed deception, the prosecution would proceed on all the charges. The parties expressly agreed that if the latter condition occurred, any statements given by Williams could be used against him. App. 7a-8a.

Pursuant to this agreement, Williams, with his attorney, went to the prosecutor's office on May 8, 1982 to give his statement. There, defense counsel outlined, "on the record," the terms of the agreement, repeatedly warning Williams that he had agreed, under the terms of the bargain, that the statements he would give could be used against him in any robbery and conspiracy charges if he "failed" the polygraph examination. App. 8a.[5] Williams acknowledged that he understood that condition. He then lied to the prosecutor, telling him he had parked in front of the liquor store and denying that he had heard any talk

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[4] While the original written agreement spoke of granting "use and transactional immunity" on the homicide, the crux of the agreement was the prosecution's promise not to prosecute. In Delaware, only a court may grant transactional immunity. 11 Del. C. § 3506 (1979).

[5] Immunity Transcript, App. 85a-87a, 90a-92a.

of a robbery during the trip to the bus station.[6] At the subsequent polygraph examination, Williams showed deception in his responses concerning his prior knowledge of the robbery.

With the agreement voided by Williams' deception, the prosecution, on June 8, 1982 charged him with murder, robbery, and conspiracy. However, in December, 1982, when Williams testified for the prosecution in the trial of Riley for murder, the prosecution dismissed the murder count, leaving only the robbery and conspiracy charges.

3. The Trial

Prior to his own trial on those two remaining charges, Williams moved to suppress the statement he had given the prosecutor on May 8, 1982. Conceding that his statement was given "voluntarily,"[7] Williams urged that it should be excluded under Delaware Rule of Evidence 410,[8] as a statement made in connection with an offer to plead guilty. The trial court denied the motion, holding that Williams had waived the exclusionary provisions of the evidence rule.

At his trial, the prosecution, without objection, offered a transcript of his testimony at the Riley trial. The admitted portion did not contain Williams' May 8th state-

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6 Williams does not dispute that this information was false. Pet. for Cert. at 12.

7 Suppression Hearing Transcript at 18. Williams made no motion prior to trial to dismiss the robbery and conspiracy charges based on any prosecution breach of the cooperation agreement.

8 App. 119a.

ment but did include his testimony that he had met with the prosecutor on that day and that he had lied when he had spoken to him. S. Exh. 7 at 324-333 [App. 77a-83a]. During his direct examination, Williams affirmed that he had gone to the prosecutor's office to co-operate but that he had not told him the whole truth. TTr. 82-85 [App. 45a-47a]. On cross-examination, the prosecutor also referred to his prior lies in the May 8th meeting. TTr. 90-95, 109-110 [App. 51a-53a, 59a-60a]..

4. The Juror Inquiry

After the jury had returned guilty verdicts, Williams attacked the jury, alleging that several jurors were partial and had deliberately lied during *voir dire*. In support of his major allegations, he offered the testimony of Paulette Winkfield who had testified as a defense witness. Winkfield claimed that one seated juror, Rebecca Perry, knew her mother, her, and Baxter's mother. In addition, Winkfield said that another juror, Walter Abrams, knew her family and possibly knew Baxter's mother.[9]

Concerned about the allegations, the trial judge recalled the two challenged jurors and, in the presence of counsel, questioned them. Perry denied knowing Winkfield, her mother, or any of the Baxters. While Abrams did admit that he recognized Winkfield's face when she testified and had met her mother on several occasions, he denied knowing Baxter's mother. Moreover, he indicated that none of his previous "contacts" with Winkfield or her mother affected the weight he had given the former's testimony.

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[9] Contrary to Williams' recital, Pet. for Cert. at 6 & 18, there was no allegation that any juror knew Riley.

Having observed the demeanor of Winkfield and the two challenged jurors, the trial judge found that Winkfield's assertions as to Perry's relationships were incredible. Secondly, he determined that Abrams did not know Baxter's mother. Finally, he held that while Abrams may have had a casual acquaintance with Winkfield's family, he had not deliberately lied during *voir dire* and had been an impartial juror.

5. The Appeal

Williams then appealed to the Delaware Supreme Court arguing (1) that the trial court erred, under the state's code of evidence, in not suppressing mention of his May 8, 1982 meeting; (2) that the evidence was insufficient to establish Williams' culpability as an accomplice and conspirator to the robbery; and (3) that the trial judge failed to adequately explore juror Abrams' contacts with Winkfield and her mother.[10] The Supreme Court affirmed his convictions.

REASONS FOR DENYING THE WRIT

1. Issues One, Two, Three, and Four Were Never Presented to the State Courts

As Williams concedes, issues one through four, concerning the nature and scope of the "immunity" bargained for between the prosecutor and defense counsel, were not presented to either the state trial court or the Delaware

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[10] Williams made no challenge on appeal to the trial judge's findings concerning juror Perry.

Supreme Court. Pet. for Cert. at 6-7. Indeed, he acknowledges that no federal constitutional claim challenging the agreement and the subsequent statement was made in the state courts. Pet. for Cert. at 26.

Williams seeks to avoid this failure by arguing that because the "immunity" issues are "purely legal issues that require no additional fact development," this Court should exercise jurisdiction. Pet. for Cert. at 7-8.

This Court has repeatedly held that, in light of the language 28 U.S.C. § 1257, it will not, except in the most unusual circumstances, review federal constitutional questions not presented to the state courts. *See, e.g., Illinois v. Gates,* —U.S.—, 103 S.Ct. 2317, 2321 (1983); *Hill v. California,* 401 U.S. 797, 805-806 (1971); *Cardinale v. Louisiana,* 394 U.S. 437, 438-39 (1969). The rule is based, in part, on the concern that the record will be inadequate for review where the parties had not focused on the issues below. However, it is equally motivated by the principles of comity inherent in our federal system, which require that state courts be initially given an opportunity to review the constitutionality of the actions of state officers. *Gates,* 103 S.Ct. at 2323; *Cardinale,* 394 U.S. at 439; *Webb v. Webb,* 451 U.S. 493, 501 (1981). Those concerns of comity require that Williams' petition be denied.

Moreover, most courts which have considered arguments similar to the ones now advanced by Williams have reached results opposite from that proposed by him. Thus, they have held that statements given as part of a negotiated agreement, in which the defendant, with the aid and the advice of counsel, has sought leniency in the charges to be brought, do not constitute "compelled" testimony. *See,*

e.g., United States v. Davis, 617 F.2d 677, 686-87 (D.C. Cir. 1979), *cert. denied*, 445 U.S. 967 (1980); *United States v. Hembree*, 754 F.2d 314, 316-17 (10th Cir. 1985); *People v. Evans*, 444 N.E.2d 7, 11 (N.Y. 1982). *See also United States v. Quartermain, Drax*, 613 F.2d 38, 41 (3rd Cir.) (recognizing difference between formal immunity and negotiated agreement not to prosecute), *cert. denied*, 446 U.S. 954 (1980); *United States v. Pellon*, 475 F.Supp. 467, 479-80 (S.D.N.Y. 1979) (same). Moreover, the courts have recognized that in such cases of prosecutorial promises of leniency the prosecutor may properly limit the scope of the charges he will not prosecute, *United States v. Gutierrez*, 696 F.2d 753, 755-56 (10th Cir. 1982), *cert. denied*, —U.S.—, 103 S.Ct. 1884 (1983), and temper his promise on the condition that the defendant truthfully co-operate. *United States v. Baldacchino*, 762 F.2d 170, 179 (1st Cir. 1985); *United States v. Hembree*, 754 F.2d 314, 316-17 (10th Cir. 1985); *Rowe v. Griffin*, 676 F.2d 524, 528 (11th Cir. 1982). *Cf. Shotwell Manufacturing Co. v. United States*, 371 U.S. 341, 349-351 (1963) (promise of no prosecution voided by deceptive disclosures). Finally, under such prosecutorial agreements, the prosecution may constitutionally use statements given pursuant to such agreements where the defendant subsequently breaches its terms, particularly where the agreement provides for their use in such an evantuality. *United States v. Stirling*, 571 F.2d 708, 732 (2d Cir.), *cert. denied*, 439 U.S. 824 (1978); *Davis*, 617 F.2d at 687; *Evans*, 444 N.E.2d at 11.

2. No Compelling Reason Exists for this Court to Review the Sufficiency of the Evidence

Because Williams does not argue that the Delaware Supreme Court utilized any erroneous standard when it reviwed the sufficiency of the evidence concerning his liability for robbery and conspiracy, Pet. for Cert. at 16, there is simply no need for this Court to undertake an independent review.

3. The Trial Court's Investigation of the Jurors' Impartiality Complied with Decisions of this Court

When confronted with Williams' allegations that two jurors might have lied during *voir dire* examination and may have known several witnesses, the trial court, consistent with this Court's decisions in *Smith v. Phillips,* 455 U.S. 209 (1982) and *McDonough Power Equipment, Inc. v. Greenwood,* —U.S.—, 104 S.Ct. 845 (1984), conducted a hearing, including questioning of the jurors. Particularly in light of the mistaken assertions in Williams' petition concerning the nature of the challenges to the jurors, Pet. for Cert. at 18-20, there is no reason to have this Court to review the accuracy of the trial judge's conclusions based on his first-hand observation of the involved jurors.

4. No Reason Exists for this Court to Make an Initial Determination Whether Williams had the Effective Assistance of Counsel

Williams asks this Court to make the initial determination, under the two-pronged test of *Strickland v. Washington,* —U.S.—, 104 S.Ct. 2052 (1984) whether he received the effective assistance of counsel. Pet. for Cert. at 20-26. The claim has not been previously presented to

the state courts. Here, where the Delaware courts have held that such claims may be brought in a collateral post-conviction proceeding,[11] there is no reason for this Court to grant review.[12]

CONCLUSION

This petition for a writ of certiorari should be denied.

July 25, 1985

Respectfully submitted,

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11 *See Duross v. State*, — A.2d — (Del. June 13, 1985); *Collins v. State*, 420 A.2d 170, 177 (Del. 1980).

12 Williams also asks this Court to review the Delaware court's interpretation of state evidence Rule 410. Pet. for Cert. at 17. This Court clearly has no power to review the correctness of a decision concerning the scope of a local court rule.